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# ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 398

DATE: Tuesday, October 20, 1992

BEFORE:

A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249

**FARR &**  
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200 Yonge St., Suite 709, Toronto, Canada M4P 1E4











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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER of a Notice by The Honourable  
Jim Bradley, Minister of the Environment,  
requiring the Environmental Assessment  
Board to hold a hearing with respect to a  
Class Environmental Assessment (No.  
NR-AA-30) of an undertaking by the Ministry  
of Natural Resources for the activity of  
Timber Management on Crown Lands in  
Ontario.

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Hearing held at the Civic Square,  
Council Chambers, 200 Brady Street,  
Sudbury, Ontario on Tuesday, October  
20, 1992 commencing at 9:00 a.m.

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VOLUME 398

BEFORE:

MRS. ANNE KOVEN  
MR. ELIE MARTEL

Chairman  
Member







A P P E A R A N C E S

MR. V. FREIDIN, Q.C.	)	MINISTRY OF NATURAL
MS. C. BLASTORAH	)	RESOURCES
MS. K. MURPHY	)	
MR. B. CAMPBELL	)	
MS. J. SEABORN	)	MINISTRY OF ENVIRONMENT
MS. N. GILLESPIE	)	
MR. R. TUER, Q.C.	)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN	)	ASSOCIATION and ONTARIO
MS. E. CRONK	)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY	)	ASSOCIATION
MR. D. HUNT	)	
MR. R. BERAM		ENVIRONMENTAL ASSESSMENT BOARD
MR. J.E. HANNA	)	ONTARIO FEDERATION
DR. T. QUINNEY	)	OF ANGLERS & HUNTERS
MR. D. O'LEARY		
MR. D. HUNTER	)	NISHNAWBE-ASKI NATION
MR. M. BAEDER	)	and WINDIGO TRIBAL COUNCIL
MS. M. SWENARCHUK	)	FORESTS FOR TOMORROW
MR. R. LINDGREN	)	
MR. D. COLBORNE	)	GRAND COUNCIL TREATY #3
MR. G. KAKEWAY	)	
MR. J. IRWIN		ONTARIO METIS & ABORIGINAL ASSOCIATION
MS. M. HALL		KIMBERLY-CLARK OF CANADA LIMITED and SPRUCE FALLS POWER & PAPER COMPANY





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MR. S.J. STEPINAC		MINISTRY OF NORTHERN DEVELOPMENT & MINES
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MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
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MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION





I N D E X   O F   P R O C E E D I N G S

ARGUMENT

Page No.

Mr. Freidin (cont'd)

68207-68336





1 ---Upon commencing at 9:00 a.m.

2 MADAM CHAIR: Good morning, Mr. Freidin.  
3 Shall we get started?

4 MR. FREIDIN: One administrative matter  
5 from yesterday. I indicated that I would provide a  
6 list of the exhibits related to the land use planning  
7 exercise in Ontario that I reviewed with Mr. Smith and  
8 I can do that now. They are Exhibits 10, 47, 48, 49  
9 and 1788.

10 ARGUMENT BY MR. FREIDIN (Cont'd):

11 I would like to begin this morning, Madam  
12 Chair, by dealing with item No. 7 in the outline which  
13 is the subject area of public consultation. The issues  
14 throughout the hearing regarding these topics were  
15 numerous and I have outlined what I believe were the  
16 essential elements or issues in relation to public  
17 consultation.

18 Firstly, are the opportunities for public  
19 investment adequate? Is the public's investment a  
20 meaningful one? When you decide the opportunities are  
21 there are they meaningful opportunities?

22 For instance, are their comments and  
23 inputs listened to seriously and if they have been  
24 seriously considered and where appropriate acted upon.

25 The third issue is the mechanisms used to

1 provide information to the public including explanation  
2 for decisions proposed to be made and then actually  
3 made adequate. How do you communicate those decisions?

4 A fourth one which I will be spending  
5 some time on this morning is the benchmark against  
6 which to measure success of a planning process, in  
7 particular the public consultation aspect of a planning  
8 process consensus.

9 You have heard a lot of evidence about  
10 whether it is reasonable to anticipate that we will  
11 have consensus as a result of a planning process.

12 There was a suggestion I think throughout  
13 the hearing by some parties that a lack of consensus at  
14 the end of the planning process was somehow an  
15 indication that the planning process was flawed and it  
16 is the Ministry's position that the lack of consensus  
17 at the end of a planning process is not an indication  
18 that the planning process is flawed.

19 Rather, that having regard to the  
20 resource that we are dealing with and the importance  
21 that the forest and the values in the forest have to  
22 people it is unrealistic to expect that any planning  
23 process could be designed which would be so perfect  
24 that absolutely everybody would get exactly what they  
25 want such that there would be consensus and no



1 disagreement or outstanding issues at the end of the  
2 planning process.

3 I would submit, Madam Chair, it is  
4 important when considering what planning process the  
5 Board is going to put in place to keep in mind that the  
6 Ministry of Natural Resources has been involved in  
7 public consultation for many years, going back even  
8 before this class environmental assessment. You have  
9 heard from numerous Ministry witnesses in that regard.

10 You also heard from various witnesses  
11 that in addition to the formal opportunities for public  
12 involvement - by formal I am speaking of the  
13 opportunities that will get set out in a planning  
14 process and which have been made available in planning  
15 processes today - that in addition to those formal  
16 opportunities for public involvement day-to-day contact  
17 between MNR and various stakeholders is an important  
18 aspect of public participation and consultation.

19 In my submission that fact should not be  
20 ignored when the Board is considering or assessing the  
21 adequacy of the formal public consultation mechanisms  
22 being proposed as part of the timber management  
23 planning process.

24 I think in the submissions of the OFIA  
25 their planning process -- they are saying that it is

1 important to have this one-on-one contact. I don't  
2 think it would be reasonable to conclude that the  
3 Ministry of Natural Resources' planning process doesn't  
4 include that element. I think to the contrary, that  
5 the evidence at the hearing should support a finding  
6 that day-to-day contact, one-on-one discussions on an  
7 ongoing basis to deal with issues is part of how the  
8 Ministry of Natural Resources conducts business and has  
9 conducted business for a considerable period of time.

10 I would also submit, Madam Chair, Mr.  
11 Martel, that it is noteworthy that public consultation  
12 has been the subject of the most agreement or the most  
13 substantial agreement by most of the parties at the  
14 hearing and I am referring specifically to the Illing  
15 Report where public consultation matters were addressed  
16 fairly extensively.

17 There has been elements of agreement on  
18 things such as information centres, with some exception  
19 a native consultation process, a dispute resolution  
20 procedure, the provision of TMP summaries that Mr.  
21 Kennedy referred to as take-home documents, values maps  
22 and importantly and perhaps most importantly the  
23 formalization of local citizens' committee which I  
24 submit hold considerable promise for public involvement  
25 and understanding of timber management in the future.



1 I would submit that it is important to  
2 note that the local citizens' committee is a concept  
3 which has not yet been introduced across all of the  
4 management units.

5 I also would submit it is important to  
6 appreciate that all of the aspects of the timber  
7 management planning process being proposed by the  
8 Ministry of Natural Resources have not yet been  
9 implemented across the area of the undertaking.

10 Mr. Martel?

11 MR. MARTEL: Mr. Freidin, there is a  
12 great deal of emphasis on local citizens' committee and  
13 what worries me is that the individual who becomes part  
14 of the planning team who is going to be involved  
15 heavily, I suspect for extended periods of time and  
16 quite frequently, how do you expect that individual to  
17 participate on an equal basis if they are not getting  
18 paid?

19 I mean it is a crass question of course,  
20 but nonetheless, just how do all of you get the idea  
21 that somebody is going to be able to participate almost  
22 on a full-time basis as though it were a hobby and do  
23 it for nothing?

24 MR. FREIDIN: I think the Ministry's  
25 position is the one that was presented by Mr. Kennedy

1 in reply, one of the reply panels, and that position  
2 really hasn't changed.

3 There are a number of people who are  
4 obviously interested in the subject matter of timber  
5 management. The Ministry has indicated that it is  
6 willing to, in fact, provide for disbursements in  
7 relation to the involvement of those people, that the  
8 Ministry of Natural Resources is not in a position at  
9 this time to be able to, in fact, pay for the  
10 involvement of members of the public who are interested  
11 in timber management planning and want to become  
12 involved to the extent that they will sit.

13 MR. MARTEL: I am not as concerned about  
14 the overall committee, Mr. Freidin, and the fact that  
15 there are a lot of things you have to do and people are  
16 genuinely interested in ensuring that's done.

17 It is the individual who becomes part of  
18 the planning team per se. I think, if I can express my  
19 own opinion, some of you are really dreaming in  
20 technicolour if you think people on a hundred units  
21 across this province can afford that kind of time  
22 repeatedly and can stay in the process.

23 I really wonder what the thinking is that  
24 people have that much spare time and that much cash in  
25 the bank that they might be able to miss their own work

1 and participate fully in the planning process itself.

2 MR. FREIDIN: Mr. Martel, I recognize  
3 that as a concern. The Ministry is not at this point  
4 in time in a position to say that it will change that  
5 position.

6 I think in relation to that matter and in  
7 some of these other matters it may very well be that  
8 experience with the local citizens' committee and  
9 having people sit on the planning team will demonstrate  
10 what you have said, that it would demonstrate -- it may  
11 demonstrate that a meaningful participation by a member  
12 of the local citizens' committee, the LCC, on the  
13 planning team won't work without some sort of  
14 compensation, more remuneration being proposed at that  
15 time.

16 If that occurs, in the light of that MNR  
17 will have to consider whether a change in the position  
18 that I have just suggested to you is appropriate, but  
19 at this particular point in time there is no indication  
20 that the proposed process will not work.

21 I understand the concern that you raise  
22 and you have difficulty understanding how it could  
23 possibly work without that, but all I am saying is that  
24 the Ministry, for the reasons indicated by Mr. Kennedy,  
25 are not at this time willing to do that, but that



1 doesn't mean that the Ministry based on experience will  
2 not adapt if necessary to, in fact, remedy a problem of  
3 the LCC as presently being contemplated not working.

4 Before I leave that, of course, there was  
5 the comment by Mr. Kennedy that to the extent possible  
6 evening meetings and discussions outside business hours  
7 could and would be developed to accommodate the kind of  
8 concerns that you are speaking of.

9 MR. MARTEL: When you have to go to Wawa  
10 or to some other community 50 miles away an evening  
11 meeting isn't all that helpful. It means you drive an  
12 hour before and an hour after to get to and from the  
13 meeting.

14 I mean, there are serious problems, Mr.  
15 Freidin, and we are talking about the real world out  
16 there and people -- travel time is long in winter. Mr.  
17 Kennedy knows this. It might take you in the banana  
18 belt 45 minutes, in northern Ontario it could take you  
19 an hour and a half quite easily.

20 I just think you underestimate the  
21 seriousness of that situation and, as I say, I am not  
22 talking about the whole local citizens' committee, Mr.  
23 Freidin. I just think that that one individual who is  
24 going to be asked to frequent meetings, some of them  
25 day meetings, some of them evening meetings, I think

1       you are asking a lot from that individual on an ad hoc  
2       basis of reimbursing them their out-of-pocket expenses.

3               Quite frankly I can't see it working and  
4       that's my own personal opinion. I don't speak for my  
5       colleague at all.

6               MR. FREIDIN: Thank you.

7               Madam Chair, Mr. Martel, I don't intend  
8       to review all of the aspects of MNR's public  
9       consultation process. You will find the explanation of  
10      our public consultation process in Chapter 2.3 of the  
11      argument or that's where the issues are addressed.

12              Suffice it to say that MNR believes it  
13      has proposed a reasonable and workable public  
14      consultation process which is responsive to many of the  
15      concerns raised throughout the hearing process, this  
16      hearing process.

17              What I want to do now is just focus in on  
18      a couple of public consultation issues which have not  
19      been the subject of all-party agreement.

20              The first one I want to deal with is the  
21      proposal by the Ministry of the Environment for  
22      optional harvest areas. There are a number of aspects  
23      dealt in relation to optional harvest areas. The one  
24      that I wish to deal about is the effect of that  
25      proposal on the amount of planning that is required and

1 its effect on information centres.

2 Before I do that, let me just stand back  
3 and let me deal with the philosophy behind MNR's two  
4 information centres.

5 You will recall that at the first  
6 information centre MNR is proposing that it has certain  
7 information available to the public and the information  
8 that it indicates it would have available is found in  
9 the Ministry's terms and conditions, Exhibit 2032, in  
10 Appendix 4 in Section 2. You find that at page 47 of  
11 the terms and conditions. That's Appendix 4, part A,  
12 Section 2.

13 You will see starting at the bottom of  
14 page 47, it states that:

15 "The first information centre. The  
16 most current version of the background  
17 information listed in Appendix 4 shall be  
18 available..." and it goes through and  
19 lists a series of subject matters where information  
20 will be provided.

21 I would highlight Section 2B where the  
22 Ministry proposes that it provides an evaluation of  
23 alternatives for each primary access road which will be  
24 required for the 20-year period of the plan, each  
25 primary and secondary access road which will required



1 for the five-year term of the plan and three  
2 operational prescriptions for areas of concern.

3           You have heard that the thinking behind  
4 this is that people would come to the information  
5 centre, they would not see final decisions, they would  
6 see an array of alternative roads and alternatives in  
7 relation to AOC prescriptions, that they would have an  
8 opportunity to have input and discuss the alternatives  
9 which were provided. They would have the opportunity  
10 to, in fact, add more information and say you missed  
11 this area, here is an area with a value over there,  
12 this should be an area of concern.

13           The thinking behind the second  
14 information centre was to provide an opportunity for  
15 the public to come together at an information centre  
16 and see what had happened with the alternatives that  
17 were presented at the first, which ones did the  
18 Ministry select, what effect did the Ministry give to  
19 their particular comments upon which alternatives they,  
20 the public, felt was important, how were areas of  
21 concern addressed. We have heard many people come in  
22 and they have specific concerns about a specific area  
23 and they are more interested in seeing whether the  
24 Ministry has dealt with it in the fashion that they  
25 feel is adequate.

1                   So the Ministry of Natural Resources  
2       feels that it is important that you have information at  
3       the first one, but you don't show decisions, but you  
4       provide an array of alternatives which the Ministry  
5       sees are available and that the second information  
6       centre is extremely important because the public should  
7       be told and have explained to them what happened to  
8       their input.

9                   The Ministry of the Environment has made  
10      a couple of changes to MNR's term and condition that I  
11      have referred you to, Appendix 4, Part A, Section 2.

12                  You should keep the Ministry's terms and  
13      conditions open, but I would also ask you to turn to  
14      the Ministry of the Environment's argument at page 112.

15                  That section of the ministry's argument  
16      is the one that deals with the subject matter of  
17      optional harvest areas and you will see that on page  
18      112 MOE' has revised its proposed amendment and it says  
19      the wording usef is now specific to harvest and similar  
20      to that employed by MNR in other terms and conditions  
21      dealing with alternatives.

22                  What they are talking about here, they  
23      have made it clear that they are optional areas, that  
24      Ms. Dahl spoke about, were optional areas for harvest  
25      not optional areas for all operations.

1                   The important point is that they have  
2 indicated there in this section through their amendment  
3 to Appendix 4 that they require these optional harvest  
4 areas to be the subject matter or information which  
5 should be available at the first information centre.

6                   You will note that they have not amended  
7 MNR's proposed term and condition Appendix 4, Part A,  
8 Section 2B.

9                   The Ministry of the Environment,  
10 therefore, are retaining the requirement for the  
11 evaluation of alternatives for each primary access road  
12 which will be required for the 20-year period of the  
13 plan, they retain the requirement where an evaluation  
14 of alternatives for each primary and secondary access  
15 road which would be required for the five-year term and  
16 they retain the requirement for the evaluation of  
17 alternatives for operational prescriptions for areas of  
18 concern.

19                   It is my submission that if you read the  
20 words of the Ministry of the Environment's terms and  
21 conditions which introduce optional harvest areas and  
22 retain the requirement for the evaluation of  
23 alternatives which is already there, that the Ministry  
24 of the Environment's terms and conditions would require  
25 the identification of alternatives for primary and



1 secondary access roads to all optional harvest areas  
2 and the identification of areas of concern in the same  
3 way that MNR is proposing that it be done, but be done  
4 in relation obviously now to more areas. The more  
5 areas being the optional harvest areas.

6 You have heard that the planning process  
7 is already a substantial one. I think some people  
8 would perhaps describe it as -- well, it is  
9 substantial. It is not a simple thing to do; it takes  
10 time, it takes a lot of effort.

11 MOE's terms and conditions would require  
12 that kind of analysis, and we are talking here now  
13 about the detailed EA type analysis, is what we are  
14 talking about here that MNR proposes and MOE have  
15 adopted, be applied to more areas than is done even now  
16 and we know that operations will not occur in all of  
17 the optional harvest areas in the next term of the  
18 plan.

19 We will end up doing all of this detailed  
20 planning in relation to areas where operations will not  
21 occur, and to refresh your memory let me just explain  
22 why that is the case.

23 That is the case because the areas  
24 selected for harvest in accordance with the MNR's  
25 planning process is an area equal to the maximum

1 allowable depletion which is the maximum area that you  
2 can harvest in the five-year term. The optional  
3 harvest areas are areas over and above that which meet  
4 your selection criteria.

5           There is no question in my submission  
6 that we are talking about looking at areas in addition  
7 to those which will be examined under the MNR's  
8 proposed planning process and we are going to be doing  
9 planning in those areas and we are not going to be  
10 going to some of those areas.

11           On that reason alone I would submit that  
12 the MOE proposal not be accepted.

13           Secondly, you heard evidence from Mr.  
14 Kennedy who has had extensive experience with the  
15 public in timber management planning and it was his  
16 observation that the desire to see optional harvest  
17 areas is not something which he believes is common and  
18 if his evidence is accepted that the desire to see  
19 these optional harvest areas is not a common  
20 occurrence, then I would submit that it is not an  
21 appropriate situation to include in a planning process  
22 as a minimum standard requirement in every timber  
23 management planning exercise.

24           I would suggest that that is the case, it  
25 is even more the case when you combine that fact with

1        what I have just finished dealing with and that is that  
2        to add these other areas is going to add a  
3        considerable burden to the planning process.

4                The Ministry of Natural Resources has  
5        recognized that in some cases the identification of  
6        optional harvest areas may be a useful thing to do as  
7        part of a dispute resolution exercise and they have  
8        provided for that possibility in one of its revised  
9        terms and conditions, and if you could just give me a  
10       moment I will try to advise you of what that condition  
11       is.   Term and condition 53 and 54.

12               It is my submission that in the  
13        circumstances that is a reasonable response to this  
14        issue of optional harvest areas.   It recognizes that it  
15        is not a common occurrence and, therefore, it shouldn't  
16        be a minimum standard requirement across the board,  
17        there is a mechanism to deal with that issue where it  
18        may be appropriate and it avoids adding even more to a  
19        planning process which is already substantial and which  
20        is criticized by some as being overly burdened some  
21        times.

22               I would draw your attention to page 112  
23        of the Ministry's argument -- MOE's, I'm sorry, and  
24        before I refer you to a portion of that you may recall  
25        Ms. Dahl's evidence, in particular my



1 cross-examination, and I think she may have left the  
2 Board or maybe she was attempting to leave the Board  
3 with the impression that somehow this optional harvest  
4 area concept really wouldn't involve very much more  
5 planning, that it really didn't have to be all as  
6 complicated as I perhaps was suggesting to her in my  
7 cross-examination, that somehow it was simple, that it  
8 really didn't have to show all the alternative  
9 corridors, do all the planning that I was suggesting to  
10 to her would be required. That was my impression of  
11 the message that was being conveyed.

12 The words of MOE's terms and conditions,  
13 as I have submitted, require the same level of detail  
14 for all optional harvest areas as the Ministry of  
15 Natural Resources' process requires for areas selected  
16 for harvest and, therefore, it isn't a simple matter.

17 The suggestions that I put to Ms. Dahl  
18 that, in fact, you would have to do the same amount of  
19 the planning for all optional harvest areas as MNR now  
20 does for areas selected were proper suggestions, that a  
21 simplified approach, if that was Ms. Dahl's view, has  
22 not been reflected in the terms and conditions which  
23 have been proposed by the Ministry of the Environment.

24 Now, the Ministry of the Environment make  
25 a comment in their argument on page 112 which may be a

1 reflection or an adoption of the evidence that Ms. Dahl  
2 gave.

3 After setting up the amendments through  
4 their term and conditions where they added optional  
5 harvest areas they state the following:

6 "MOE's proposed amendment will require  
7 the planners to present a reasonable  
8 number of practical alternatives for  
9 harvest areas to the public at stage two  
10 of the public consultation process and  
11 prior to a selection decision being  
12 made. Although Ms. Dahl described an  
13 example of how this could be done, MOE is  
14 content to leave flexibility and  
15 discretion in the hands of the planning  
16 team as to the appropriate number of  
17 alternatives and the depth of analysis  
18 appropriate."

19 So the question arises: Well, Mr.  
20 Freidin, there is the discretion, we don't really have  
21 to do all of that planning that you were suggesting to  
22 Ms. Dahl because the planning team are now being told  
23 here that they have the flexibility and the discretion  
24 to determine the appropriate number of alternatives and  
25 the depth of analysis appropriate.

1                   In my submission that comment does not  
2     change things. It does not make the Ministry of the  
3     Environment's proposal somehow okay from the Ministry  
4     of Natural Resources' perspective and that is because  
5     the people to whom the Ministry of the Environment are  
6     saying you have the flexibility, you have the  
7     discretion to identify the appropriate number of  
8     alternatives and the depth of analysis appropriate, the  
9     people to whom that decision is being left, whose  
10    discretion is being relied upon, the Ministry of  
11    Natural Resources have said to you: In our discretion  
12    we don't think that anything less than the kind of  
13    analysis that we are proposing for our areas selected  
14    for harvest should apply to the optional harvest areas.

15                  The Ministry of Natural Resources who are  
16    the people who are involved in a day-to-day basis in  
17    the field talking to the people involved in timber  
18    management planning have said to you that based on  
19    their experience the public will not regard their  
20    involvement as being a meaningful one if they show up  
21    at an information centre and are asked to choose  
22    between optional harvest areas where there is no road  
23    alternatives shown, where the AOCs are not done the way  
24    MNR does them.

25                  So you have got the people who MOE are



1 saying you use your discretion and the people to whom  
2 that discretion is granted are saying to you right here  
3 and now: You can't get away with doing less for all  
4 those areas.

5 In my submission if you accept that  
6 proposition, then you have to deal with their proposal  
7 on the basis of whether or not you should be doing all  
8 of this additional work in relation to areas where you  
9 are not going to go and require it as a mandatory  
10 minimum standard in all cases when the evidence is that  
11 the public are not asking for that everywhere.

12 MR. MARTEL: What prevents MNR, if that's  
13 their position, from simply saying leave it in. It is  
14 our option, we have decided to throw it out, we are not  
15 considering it each time? It becomes repetitive and  
16 useless.

17 They say the option is yours whether you  
18 present it or not and if you choose not to present it  
19 what come-back do they have in your opinion when they  
20 say the discretion is yours as to the appropriate  
21 number of alternatives and the depth of analysis  
22 appropriate and you say you are not presenting any?

23 MR. FREIDIN: I will answer it this way.  
24 Why would one put in place a planning process that says  
25 it is up to you if you are trying to design a

1 reasonable planning process.

2 The people who know about timber  
3 management planning are telling you that that would  
4 just be a smoke screen, Mr. Martel. If you are going  
5 to put in place a planning process and it has got to be  
6 a common planning process across the area of the  
7 undertaking you put into place, in my respectful  
8 submission, minimum standard requirements which apply  
9 across the board.

10 You do not put in requirements that say  
11 do this if you want and do that if you don't want,  
12 particularly in this area where the Ministry is saying  
13 based on its experience it has to do the kind of  
14 planning they are talking about for the exercise to be  
15 a meaningful one.

16 If that is the Ministry's view, the  
17 Ministry doesn't want -- a provision that says to do  
18 something that is perhaps not meaningful. It is as  
19 simple as that.

20 MR. MARTEL: But, Mr. Freidin, since they  
21 have haven't taken the initiative to be very specific  
22 as to what they really are after, why should you take  
23 it very seriously what they are after?

24 MR. FREIDIN: Because the optional  
25 harvest areas are a requirement. They are saying they

1 are a requirement. You have to identify them.

2 It is the amount of information. The  
3 flexibility is given not to identify optional harvest  
4 area, the flexibility is given as to the amount and the  
5 number of alternatives and depth of analysis which is  
6 appropriate and I am saying to you there is no -- if we  
7 exercised our flexibility and our discretion  
8 reasonably, given an opportunity, a requirement to show  
9 optional harvest areas it would always be and it could  
10 only be properly exercised if you did the level of  
11 planning that we say is referred to in our Appendix 4,  
12 Part A, Section 2B.

13 If I am correct, if that's the case, if  
14 that's the only reasonable way to deal with an analysis  
15 of optional harvest areas, then it automatically  
16 becomes a mandatory minimum requirement for optional  
17 harvest areas to do the level of analysis the Ministry  
18 of Natural Resources has proposed and that is  
19 unacceptable. That is unacceptable because optional  
20 harvest areas are not a matter that everybody is asking  
21 for. The Ministry of the Environment doesn't say --  
22 they are not asking for it, they are just saying  
23 identify them all.

24 MR. MARTEL: Mr. Freidin, maybe I am not  
25 getting my point across to you.



1 I understand the necessity to identify  
2 the optional areas, but they say -- I mean, one has to  
3 ask whether they are very serious about it when they  
4 say identify them. Throw in anything you want. If you  
5 don't want to don't put it in. It is your discretion  
6 how much material you want put in, how much analysis  
7 you want to provide.

8 You could drive a tractor trailer through  
9 it because it really is quite irrelevant the way it is  
10 described there.

11 MR. FREIDIN: Well, on that basis, Mr.  
12 Martel, I would ask you to reject it then.

13 MR. MARTEL: Then do that.

14 MR. FREIDIN: Well, all right. If you  
15 don't like my submission as the basis of rejecting  
16 it -- I don't care on what basis you reject it, to be  
17 quite honest with you, so reject it for the reasons you  
18 have indicated. I accept your proposal.

19 MS. SEABORN: Mr. Martel, we will  
20 certainly be coming back to that issue during our  
21 argument.

22 MR. FREIDIN: As a closing point on that,  
23 if the optional harvest areas are identified in there,  
24 the public - it is right in that planning process as a  
25 requirement - they are going to expect it to be a

1 meaningful exercise, not some do a little bit and -- it  
2 doesn't make much sense.

3 They are going to expect, and that is  
4 what the Ministry of Natural Resources is saying, they  
5 are going to expect it to be a meaningful exercise and  
6 the Ministry of Natural Resources is saying that means  
7 a lot of documentation for the reasons I have  
8 indicated.

9 We take the terms and conditions  
10 seriously. They are an indication to the public as to  
11 what they can expect to be done in a reasonable and  
12 responsible fashion. So there shouldn't be things in  
13 there that are just somehow meant to be a throw-away  
14 item.

15 The last point related to optional  
16 harvest areas is that the Ministry of Natural Resources  
17 have a second revised condition. It is term and  
18 condition No. 28 which is one which indicates that an  
19 explanation will be provided in the timber management  
20 plan. It will be provided to the public during the  
21 planning process of how the application of the  
22 selection criteria resulted in the areas selected for  
23 harvest.

24 That's something which wasn't there --  
25 well, the other areas as well, but before that

1 amendment was made there was no explanation. You will  
2 recall there are selection criteria which affect how  
3 you choose areas. Until that revision was made there  
4 was no requirement, no commitment by the Ministry of  
5 Natural Resources to explain to the public how the  
6 application of those selection criteria actually ended  
7 up in the areas that they see on the map having been  
8 selected.

9           There is now a commitment to do that not  
10 only in relation to harvest, but in relation to the  
11 areas selected for renewal and tending. You will find  
12 that discussion at page 870 of the MNR argument.

13           One last comment in this area. It was  
14 yesterday, I guess yesterday that the Ministry and  
15 other parties received the submissions of the  
16 OFAH/NOTOA coalition. I haven't had a chance to read  
17 them yet. I skimmed them last night.

18           Apropos of this discussion about how much  
19 information should be provided at the first information  
20 centre will be acceptable and apropos of your comment,  
21 Mr. Martel, about are we going to have to do this all  
22 again, I would just point out to you page 56 of the  
23 OFAH terms and conditions. I am sure we will all be  
24 dealing with that later, but it will give you an idea  
25 of the amount of detail that some parties are proposing



1 be provided at the first information centre.

2 If optional harvest areas --

3 MR. MARTEL: Is that part of the brief?

4 MR. FREIDIN: I'm not too sure. I don't  
5 have it with me.

6 O'LEARY: It is Volume 3.

7 MR. FREIDIN: If you look at the kind of  
8 detail and the kind of analysis that the Federation or  
9 Coalition is proposing, add that - I am assuming for  
10 the moment that you accepted it - you add that to  
11 optional harvest areas and I would ask you to think  
12 about what that means.

13 The last item in relation to public  
14 consultation that I would like to touch on specifically  
15 is the native consultation process.

16 As you are aware, MNR was developed a  
17 native consultation with NAN, Windigo Tribal Council,  
18 OFIA and MNR. It is optional; no one must be involved  
19 in it. It is not binding on anyone. Any particular  
20 community can become involved or not as they see fit.

21 Treaty No. 3 has some concerns about it.  
22 I think the appropriate thing to do is to wait for Mr.  
23 Colborne's submission in that regard before I say much  
24 more, but there are two observations before I leave the  
25 topic.

1           The first is that I am somewhat confused  
2   how Grand Council Treaty No. 3 on the one hand can ask  
3   the Board to order what are, in effect, constitutional  
4   negotiations which is what, in effect, I submit their  
5   term and condition No. 2(a) asks for and at the same  
6   time say that the Board shouldn't put in place an  
7   optional planning process across the area of the  
8   undertaking.

9           Secondly, I would just remind the Board  
10   that some of the First Nations which are members of  
11   Grand Council Treaty No. 3 have testified, and I hope  
12   that no one feels that this in any way an improper  
13   characterization of their evidence, that MNR's  
14   proposals in relation to a native consultation process  
15   might be a step in the right direction.

16           I refer particularly, Madam Chair, to our  
17   argument in Chapter 2.3 at pages 616 to 619 and in  
18   particular the discussion that took place between  
19   yourself, Madam Chair, and one of the witnesses for  
20   Grand Council Treaty No. 3 regarding their view on the  
21   proposal, at least that part of the proposal dealing  
22   with going to communities and obtaining information.

23           I do not believe it is necessary for me  
24   to review that with you at this time, but I refer you  
25   to that portion of our argument.

1 I would like to move on to the last point  
2 in relation to public consultation and that is to go  
3 back to the issue of consensus. A consensus is not the  
4 benchmark against which one assess the goodness, to use  
5 Dean Baskerville's terminology, of a planning process.

6 Dr. Thomas, you may recall, said:

7 "In my youth I used to dream about  
8 being able to end controversy. I no  
9 longer believe that that is possible."

10 He said that in Volume 353, page 61,544  
11 to -45.

12 Mr. Smith, Panel 10, during his evidence  
13 reviewed portions of the review which had been done in  
14 the United States for a planning system and he and I  
15 also had a discussion about parts of the proposed  
16 amendments to the regulations under the National Forest  
17 Management Act in the United States which deals with  
18 planning in national forests.

19 Mr. Smith said as well that consensus is  
20 not something which can be expected, and I think it  
21 would be instructive for me to refer to some of the  
22 evidence of Mr. Smith in that regard.

23 Firstly, I would like to refer to Volume  
24 302 at page 53,804. At that page, Madam Chair, I  
25 quoted from the review that had been done of the United



1 States forest planning system and asked Mr. Smith  
2 whether he agreed with it.

3 Mr. Smith agreed with the following  
4 proposition:

5 "Success is not necessarily measured by  
6 a lack of controversy. Addressing  
7 conflicts often leads us to much greater  
8 recognition and understanding of  
9 differing views, issues and controversy  
10 can be the stepping stones to building a  
11 collective vision about the national  
12 forest."

13 I continued -- if I could have one  
14 moment. I have a problem here with my notes.

15 At page 53,808, Exhibit 809, we discussed  
16 one of the passages from the document which had been  
17 issued about the proposed amendments to the regulation  
18 and the statement says, and I am reading from the  
19 transcripts, it starts at the top of page 53,808, this  
20 is a quote from the document.

21 "It is apparent that many controversies  
22 render or remain unabated. Even though  
23 procedural improvements can enhance  
24 various aspects of the planning process  
25 there remains fundamental disagreement

1           within our society about management of  
2           national forest lands. The issues  
3           surrounding national forest system  
4           management require that difficult choices  
5           be made where there are no universally  
6           accepted answers. In this high stakes  
7           and emotion-filled arena forest planning  
8           cannot be expected to resolve all of the  
9           differences. It is not necessarily a  
10          reflection of inadequacy of forest  
11          planning, but rather an indication of the  
12          importance the American people place on  
13          the national forest system and its  
14          resource."

15          That's the end of the quote. I said:

16                "Is that a statement that you agree  
17                with?"

18          He said: "Yes."

19                "Q. Would you assume, sir, that that  
20                is probably a statement which can be true  
21                in any jurisdiction where forest  
22                management planning takes place and the  
23                public are concern about it?

24                "A. It would be surprise me if it  
25                wouldn't apply everywhere."

1 I wouldn't have expected him to say  
2 anything else and it is for those reasons that it is  
3 the same here and it is for those reasons that the  
4 outcome cannot be any different.

5 The following statement was also made  
6 during the hearing.

7 "The whole matter of trust, where does  
8 it start? I mean, somewhere along the  
9 line we have to say that the leaf has  
10 turned over and we have got to start.  
11 Where do we start? This hearing is  
12 changing MNR's response to concerns.  
13 There is a more responsive position and  
14 the bottom line appears to be that the  
15 concern -- the concern remains that after  
16 this hearing is over we might go back to  
17 square one. Somewhere along the line  
18 testing that trust has to come into play  
19 and do we build in so many safeguards  
20 that the system can't move until we prove  
21 somebody is trustworthy or should that be  
22 part of the five or six year review after  
23 an approval has been achieve? I mean,  
24 that is one of the safeguards, isn't it,  
25 that there is going to be another review



1 of this process after it comes into  
2 existence and somewhere along the line we  
3 have got to start to rely on the  
4 confidence that's required in order to  
5 make the process work."

6 I don't know how many people know whose  
7 quote that was, but that was yours, Mr. Martel, in  
8 Volume 341 at pages 59,478 to 59,479.

9 I interpreted you at that point in time  
10 as saying somewhere along the line we have to give the  
11 process a chance to work.

12 If that's what you meant, the Ministry of  
13 Natural Resources adopts that statement wholeheartedly.  
14 Give the process a chance to work.

15 Part of that process is in place now,  
16 part of that process -- and I go back to my reference  
17 that the LCC has not been used across the area of the  
18 undertaking yet, that there are provisions in MNR's  
19 terms and conditions about improving the planning  
20 process which is awaiting approval in some cases from  
21 the Board before it gets implemented across the area of  
22 the undertaking.

23 MNR is saying to you we have demonstrated  
24 a willingness to make a process work. We have proposed  
25 a new process. We have been implementing parts of it

1 even as the hearing has been ongoing and are saying we  
2 will do even more once it is over. So we say, give the  
3 process a chance to work.

4 That comment came during a  
5 cross-examination in OFAH Panel No. 2 when Ms.  
6 Dube-Vellieux was being cross-examined and after you  
7 made that comment, Mr. Martel, she said:

8 "I'm afraid that even with having gone  
9 through all of this the concern is still  
10 going to be there."

11 You made some comments, Mr. Martel, after  
12 that that I think accurately reflect the concern of a  
13 number of witnesses who came forward before the  
14 hearings regarding this trust issue, if I can  
15 characterize it as that.

16 For example, if I can refer you to page  
17 59,480 of the transcript. Mr. Martel, you comment  
18 commencing on line 11:

19 "But hasn't the fear, some of the fear  
20 of some of the parties been that things  
21 were working now? The impression to me  
22 at least has been that it is because this  
23 hearing is going on and people are  
24 watching much more carefully, but boy  
25 just wait until the hearing is over and

1 we might be back to where we started  
2 from. That seems to be an underlying  
3 fear of many of the witnesses we have  
4 heard, from my perspective at least."  
5 You continue over at the bottom of page

6 59,481:

7 "What we are hearing is that people  
8 feel that there has been significant  
9 change and that the hearing has prompted  
10 some of it."

11 I emphasize some of it.

12 "...and we have changed. Literally as we  
13 go along there are changes being made and  
14 we are talking four years, too. Could an  
15 agency having gone through this really  
16 try to turn the clock back without an  
17 uproar?"

18 I say to you, Mr. Martel, of course not.

19 In my respectful submission, for someone to accept the  
20 suggestion that the Ministry of Natural Resources would  
21 do that would be cynical in the extreme and would  
22 require one to find that the evidence of the Ministry  
23 of Natural Resources which was given at this hearing is  
24 a charade.

25 So, in summary, the full planning process



1 proposed by MNR has not been instituted yet in any one  
2 location. For that reason and based on the evidence of  
3 people that things have been improving and based on  
4 your view and assessment of the people who were  
5 involved in timber management that you have seen  
6 throughout the hearing we ask that the Board adopt Mr.  
7 Martel's comments that somewhere we have to give the  
8 process a chance and I am suggesting that we start with  
9 the Board's approval.

10 Before moving on to the next topic I  
11 would like to say that the above comments regarding  
12 'give the process a chance' and 'consensus not being a  
13 benchmark against which to measure success of a  
14 planning process' are important to keep in mind when  
15 considering suggestions that have been made and may be  
16 made again during argument, that the number of bump-up  
17 requests or the number of designations related to  
18 timber management plans are large and that that means  
19 that the planning process is somehow flawed and must be  
20 changed.

21 You may recall Ms. Dahl in her evidence  
22 indicating what she thought were a large number of  
23 bump-up requests and suggesting, in my respectful  
24 submission, that somehow that indicated the process was  
25 flawed.

1                   The Ministry of Natural Resources submits  
2           that having regard to the number of timber management  
3           projects that go on across this project in the area of  
4           the undertaking every year in a hundred management  
5           units are such that when you look at the number of  
6           designation requests that Ms. Dahl was referring to it  
7           is small indeed.

8                   The number of designation requests that  
9           she referred to, in my submission, does not in any way  
10          justify the conclusion that the process is so flawed  
11          that it needs changing or that the timber management  
12          planning process being proposed by the Ministry of  
13          Natural Resources won't work.

14                  You may work recall that even in relation  
15          to some of those designation requests they were  
16          resolved. They didn't end up going to individual  
17          environmental assessments and that sort of thing and in  
18          some cases they were just denied.

19                  I mean, the fact that people will not be  
20          satisfied a hundred per cent of the time there will  
21          continue to be controversy. There will continue to be  
22          bump-up requests. There will be bump-up requests which  
23          are denied because someone will say they just aren't  
24          not valid. Just because there is a concern doesn't  
25          mean that there will be an individual environmental

1 assessment. The fact that bump-up requests are made,  
2 denied or granted, does not mean that the process is  
3 flawed.

4 Of course, one of the things that you  
5 have to do is put in place a planning process which you  
6 think is reasonable, but I guess I am saying you better  
7 not try and design one which is going to be a  
8 guaranteed winner in that there will never be a lack of  
9 consensus because what I think the witnesses have said  
10 is that that is a benchmark that is almost the  
11 impossible to achieve.

12 In the same vein, Madam Chair, comments  
13 by EAAC, the Environmental Assessment Advisory  
14 Committee, regarding the shortfalls of the timber  
15 management planning process should be given little, if  
16 any, weight in your assessment of the planning process.

17 There is a reference to comments by EAAC  
18 in paragraphs 214 to 217 of FFT's argument. I think  
19 there is a reference to it somewhere in MOE's, but I  
20 don't have the citation for that.

21 Those comments by EAAC were based on a  
22 couple of days of submissions, untested by any  
23 cross-examination and, more importantly, their  
24 understanding of timber management and timber  
25 management planning must pale in comparison to the



1 understanding that both of you have gained over the  
2 last four and a half years.

3 I would suggest that when you are making  
4 your decision you will be relying on that experience  
5 and little, if any, weight should be given to the  
6 observation of a board or a committee that made  
7 comments after the kind of review and discussion that I  
8 have described.

9 I am going to get into the area of  
10 monitoring. I am not too sure whether it is too early  
11 for a break or not, but the issue of monitoring will  
12 likely take a good 45 minutes or so, Madam Chair. It  
13 will take some time.

14 Is this an appropriate time to break?

15 MADAM CHAIR: Thank you, Mr. Freidin. We  
16 will take our 20-minute morning break now.

17 ---Recess at 10:17 a.m.

18 ---On resuming at 10:40 a.m.

19 MADAM CHAIR: Mr. Freidin, please  
20 continue.

21 MR. FREIDIN: I would like to move to  
22 item No. 8. I am becoming increasingly excited as I  
23 get closer to No. 11, but I won't delete the things I  
24 think I have to say.

25 The next topic I would like to address is

1 the topic of monitoring which is addressed in our  
2 Chapter 3.2 which you will find at pages 671 to 736.  
3 Because I am not going to deal with many of the topics  
4 that are in that chapter I would ask you to turn to  
5 page 671 in Volume 2.

6 The two areas in that chapter that I am  
7 going to deal with are, firstly, in relation to timber  
8 values, assessing silvicultural effectiveness and  
9 reporting and, secondly, in relation to non-timber  
10 values.

11 What I want to do is provide the Board  
12 with a brief overview of MNR's position on the debate  
13 about what is effects monitoring and what is  
14 effectiveness monitoring.

15 Thirdly, whether the Board should order  
16 local effects monitoring as proposed by some of the  
17 parties.

18 That whole discussion, Madam Chair, Mr.  
19 Martel, is complicated somewhat by the fact that  
20 different parties have used the terms effects  
21 monitoring, effectiveness monitoring and local effects  
22 monitoring differently.

23 In my submission those terms mean  
24 something different to the different parties and I  
25 believe that it will be important for there to be a

1 clear understanding after this hearing what is meant by  
2 those terms so that when in the future there are  
3 discussions about or perhaps requirements imposed to do  
4 effects monitoring that people know what they are  
5 talking about.

6 Those are the matters that I do want to  
7 deal with and I ask you to turn to page 671 just to  
8 ensure that there is an understanding of the numerous  
9 topics which are addressed in that chapter other than  
10 the ones than I have selected to address.

11 The areas are very quickly compliance  
12 monitoring, there were a number of issues addressed,  
13 timber management effectiveness monitoring of which I  
14 am going to address some of the issues.

15 You will see going over to page 672 that  
16 after reporting requirements there are a series of  
17 headings in relation to effects and effectiveness  
18 monitoring of non-timber values and it is there where  
19 the Ministry has described the ongoing programs in  
20 relation to three of the provincial guidelines and I  
21 don't intend to review that material with you.

22 The major portion of my submission in  
23 relation to non-timber values will revolve around issue  
24 J with some passing comments on the balance of the  
25 issues.



1                   So if I could deal with the silvicultural  
2 effectiveness issue. MNR submits that as part of  
3 regular ongoing timber management foresters assess  
4 their silvicultural efforts and based on their  
5 observations of the results make professional judgments  
6 as to whether they should modify or adapt their  
7 prescriptions in an attempt to improve.

8                   It is my submission that the evidence  
9 establishes that this is done as a routine matter. It  
10 is part of practising timber management as a  
11 professional forester.

12                  I make that point because when I read  
13 portions of the transcript and look at some  
14 cross-examinations I got the feeling that some people  
15 perhaps were suggesting that unless there was some  
16 formal system in place that foresters don't think about  
17 what they are doing and they don't assess the  
18 effectiveness of what they are doing and don't adopt or  
19 modify their silvicultural practices in order to  
20 achieve their silvicultural objectives.

21                  If that was the impression that people or  
22 parties have attempted to convey, then I would suggest  
23 that it is an impression or a proposition that the  
24 Board should not accept.

25                  Mr. Hynard spoke to this matter during

1 his evidence and I think it would be worthwhile to  
2 refer to page 730 of the MNR argument where Mr. Hynard  
3 I think expresses the proposition that I put forward  
4 and that is that the professional foresters take their  
5 responsibilities seriously and they do on a continuous  
6 basis seek to better the management for which they are  
7 responsible.

8 On page 730 in the second full paragraph  
9 it indicates that Mr. Hynard, in addressing a question  
10 from MOE about how past results are reported and  
11 communicated between forest management units,  
12 indicated -- this happened I think during Panel 12 and  
13 13. He said:

14 "In Panel 11 I said to you how  
15 important the undocumented procedure of  
16 foresters and their staff visiting their  
17 old treatment projects and revisiting  
18 them again over time is in that process  
19 and that feedback and learning from past  
20 treatment results in incorporating  
21 knowledge of past results into present  
22 treatment prescriptions. I said to you  
23 at that time that unit foresters were  
24 interested in a particular treatment type  
25 on a particular site type or on a

1 particular stand condition can track down  
2 similar projects simply by phoning your  
3 colleagues and asking them: Do you have  
4 something meeting this description that I  
5 can go and see? I have this problem on  
6 my unit and I would like to see your past  
7 results. That kind of feedback is  
8 available to unit foresters."

9 As you go through the next few pages  
10 there is a discussion about how the professional  
11 foresters will avail themselves of services or with  
12 technical development units when in fact an issue  
13 arises that they are unable to deal with or they feel  
14 that more rigorous types of investigations are  
15 required.

16 In terms of silvicultural operations and  
17 treatments, MNR has an information system that you have  
18 heard about. It is an information system for recording  
19 silvicultural treatments and recording results.

20 The information centre I am referring to  
21 is described as SIS/SAS, silvicultural information  
22 system and silvicultural assessment system.

23 You have also heard evidence from Dr.  
24 Osborn that that particular system is in the process of  
25 being improved.



1           The issue I wish to address is whether  
2     the Ministry's proposals regarding how that improvement  
3     should occur are reasonable. Not that improvement  
4     occur, but how they should occur and I do so because  
5     some parties, in my submission, have suggested that  
6     although they support MNR's initiatives in this regard  
7     they say that the completion of the initiatives will  
8     not be for some time and, therefore, the Board should  
9     order some specific things be done in the interim.

10           MNR addresses those suggestions for that  
11     particular issue in Chapter 3.2 on pages 691 to 697.

12           I would like to take a few moments to  
13     refer to certain passages which highlight why MNR  
14     submits that ordering more than what MNR is  
15     proposing -- I want to establish or explain why MNR  
16     submits that ordering more than what MNR is proposing;  
17     i.e., ordering interim measures proposed by some of the  
18     parties is not necessary and could be  
19     counter-productive to getting on with the job of making  
20     real progress.

21           If the Board could turn to page 691 you  
22     will see that there is where the need for an  
23     information system is addressed and you will note in  
24     the middle of the page just above the heading it  
25     states: .

1 "It is necessary to have an information  
2 system which will provide relevant  
3 silvicultural information which can be  
4 analysed in order to improve the  
5 management decision making."

6 There is a reference, if you go to the  
7 second paragraph, to the description of the SIS/SAS  
8 system as described by Dr. Osborn in Panel No. 16 and  
9 we have a reference to transcript volumes there where  
10 you can find that description.

11 As I indicated, there is a reference in  
12 the next paragraph to the fact that MNR has identified  
13 a number of shortcomings in that system and that some  
14 of the action being taken to address that is identified  
15 in the first full paragraph on page 692 where it  
16 indicates that:

17 "As a result of those shortcomings  
18 being identified MNR has undertaken a  
19 silvicultural treatment effectiveness  
20 monitoring system... the acronym STEMS,  
21 "...projects with two broad objectives in  
22 mind..." and then they are set out.

23 So MNR has identified a need and a desire  
24 to improve its ability to analyse the results of its  
25 silvicultural treatments for the purpose of improving

1       silvicultural practices.

2               It is interesting to note I think that  
3       Dr. Osborn was of the view, and I think the correct  
4       view, that the objective of the work being done by the  
5       Ministry is the same objective that I think everybody  
6       would want to achieve and he refers to that at the  
7       bottom of page 692 where it states:

8               "...two specific business goals  
9               associated with STEMS..." This is the  
10       quote at the very bottom:

11               "There are two specific business goals  
12               associated with STEMS. Literally to have  
13               the practising forester improve both  
14               efficiency and effectiveness of that  
15               which he or she was doing and in addition  
16               to improve the way in which both those  
17               practices and the results and the  
18               effectiveness of those results could be  
19               reported and described."

20               The issue which is identified on page 693  
21       is the one about interim measures. Is it necessary to  
22       do something while STEMS is being developed to improve  
23       the record keeping and assessment system?

24               The issue states:

25               "For the purposes of assessing and



1 reporting to the public on silvicultural  
2 effectiveness should MNR be required to  
3 change the manner in which the results of  
4 silvicultural activities are recorded  
5 pending full implementation of the STEMS  
6 systems?"

7 The issue I think was most important if  
8 you look at the parties -- it seemed to be most  
9 important to the Ministry of the Environment and in  
10 that regard they called one witness, Mr. Bax and Mr.  
11 Bax gave his view on the need to change things.

12 I would point out that Mr. Bax was not  
13 qualified as an expert in information systems  
14 development and he acknowledged that he was not an  
15 expert in relation to MNR's proposed initiatives  
16 regarding stems.

17 He was the Ministry of the Environment's  
18 only witness to comment on this matter or the only  
19 witness with training in silviculture and silvicultural  
20 record keeping to comment on the approach that the  
21 Ministry of Natural Resources is taking to this issue.

22 You will note on page 694 in the second  
23 last paragraph, it states that:

24 "During cross-examination, Mr. Bax  
25 acknowledged that he was not an expert in

1 relation to MNR's proposed initiatives to  
2 improve its silvicultural reporting  
3 system, but that he believed..."

4 He believed, he didn't say he knew.

5 "...he believed that, by using MNR's  
6 initiative under the general standard  
7 site type, that MOE's proposed conditions  
8 would be 'easily met.'"

9 "However..." it goes on,

10 "...as explained by Dr. Osborn (who is an  
11 expert in information system development,  
12 including the MNR's STEMS initiative),  
13 the existing Silvicultural Information  
14 System does not allow for the addition of  
15 this type of information, and to attempt  
16 to adapt the existing system to allow  
17 for inclusion of this information would  
18 hinder MNR's ability to proceed with the  
19 STEMS project, which was designed to  
20 address the same concern which has now  
21 also been identified by MOE."

22 Dr. Osborn continues, if you turn over to  
23 page 695 in relation to this matter, in the fourth  
24 line, he says:

25 "...let's not do another two or three

1                   year interim solution..."

2                   "...let's not do another two or three  
3                   interim solution; let's do  
4                   it right, let's do it properly; and let's  
5                   wrestle with existing SIS over the next  
6                   five years as best we can."

7                   I reiterate and state it again in the  
8                   next paragraph in the third line starting at the  
9                   right-hand side, and you should not forget:

10                   "The STEMS project described by Dr.  
11                   Osborn is intended to address the very  
12                   concern now raised by MOE, i.e.,  
13                   that record keeping should be designed to  
14                   provide information on silvicultural  
15                   records of prescription and their  
16                   results."

17                   So, Madam Chair, Mr. Martel, when you  
18                   assess the proposal by the Ministry of the Environment  
19                   as to its practicality, as to its reasonableness, you  
20                   are in a position where you will have to assess the  
21                   evidence of Mr. Bax and weigh it against the evidence  
22                   of Dr. Osborn and this is one of those situations which  
23                   I described to you earlier about weighing and choosing  
24                   between different proposals by different witnesses.

25                   In this case we are talking about how to,



1 in fact, develop an information system which will  
2 improve the ability to assess the results of  
3 silvicultural treatments and improve silvicultural  
4 practices as a result of increased understanding.

5 You have Dr. Osborn who is an expert in  
6 information systems and has the other qualifications  
7 that were provided to you when he was in Panel No. 3  
8 and you have Mr. Bax's qualification.

9 I am not taking anything away from Mr.  
10 Bax in terms of other matters, but he doesn't have, in  
11 my respectful submission, the expertise in this  
12 particular area such that a proposal that he is  
13 supporting should be accepted when someone with the  
14 expertise and the understanding of these matters such  
15 as Dr. Osborn has said that it is not the thing to do.

16 As to whether there is some urgency to do  
17 something in the interim, I will think that is an  
18 important question as well. If one is considering the  
19 need for some interim measures I think, I would submit,  
20 that the question arises: If things are going to be  
21 done properly over time is there something so awry out  
22 there that we have to do something in the interim.

23 In my submission the evidence does not  
24 justify a conclusion that there is some urgency or  
25 unacceptable practice or condition going on out there

1       that requires something be done in the interim when, in  
2       fact, to do something in the interim has the  
3       difficulties described by Dr. Osborn, and I refer here  
4       specifically to page 696, the very first full paragraph  
5       where it states:

6                        "As to whether there is any urgency to  
7                        introduce an interim change to recording  
8                        and reporting silvicultural effectiveness  
9                        one should keep in mind that Mr. Bax  
10                      acknowledged that information on  
11                      silvicultural effectiveness from the  
12                      manager's point of view can currently be  
13                      gleaned from the project records. MNR  
14                      witnesses have also testified that the  
15                      examination of silvicultural project  
16                      records is common practice among  
17                      foresters."

18                     It is my submission that based on that  
19       evidence of Mr. Bax he is, in effect, saying that the  
20       analysis of records can be done and are being done to  
21       improve silvicultural effectiveness and that can be  
22       done from the manager's point of view.

23                     That being the case, I would suggest that  
24       there is no urgency to do something in the interim;  
25       that is, between now and the time that the STEMS

1 project will after being conducted in a methodical and  
2 responsible fashion produces the kinds of improvements  
3 that are desired.

4 The submissions in relation to this  
5 matter are summarized on page 696 and over to page 697.  
6 I won't repeat them. I will just make reference to  
7 them before I move on.

8 The next area I would like to deal with  
9 are reporting requirements. As you are aware, there  
10 are a number -- and this starts on page 697. As you  
11 are aware, the Ministry of Natural Resources has  
12 proposed in its terms and conditions the creation of a  
13 number of reports to the public which are new.

14 They are an annual report to be prepared  
15 for each forest management unit, an annual report which  
16 will be prepared for presentation in the provincial  
17 legislature, an annual report to be filed with them  
18 which will deal with the activities across the area of  
19 the undertaking and the preparation and filing with the  
20 legislature of a document referred to as the State of  
21 the Forest Report which, again, deals with timber  
22 management at the provincial level.

23 Those reports and in particular their  
24 contents are described in appendices to MNR terms and  
25 conditions and they are Appendix 18, Appendix 20 and



1 Appendix 22 of MNR terms and conditions which were  
2 marked as Exhibit 2032. Again, I don't intend to take  
3 any time to go through them.

4 It is MNR's submission that over and  
5 above information which is obtained by the public from  
6 being involved directly in timber management planning  
7 itself that these requirements are a reasonable method  
8 of keeping the public generally informed about timber  
9 management at both the forest management unit level and  
10 at the broader provincial scale.

11 With that I would like to move on to  
12 non-timber monitoring and the discussion of non-timber  
13 monitoring begins at page 705 and takes up the balance  
14 of Chapter 3.2 beginning on page 705.

15 If I might I would like to start by  
16 referring to page 706 where effects monitoring and  
17 effectiveness monitoring is described. In the second  
18 line it states:

19 "Effects monitoring involves efforts to  
20 understand what the effects of timber  
21 management activity are upon the  
22 environment."

23 And then it states that:

24 "Effectiveness monitoring is an  
25 examination of whether recommended

1 measures when implement are effective in  
2 achieving the desired protection from the  
3 potential negative effects of timber  
4 management."

5 I would like to refer to issue J on page  
6 716 which addresses a matter which occupied  
7 considerable time during the hearing and the issue  
8 arises from one of the proposals of the OFAH/NOTOA  
9 coalition.

10 The issue states as follows:

11 "Is the OFAH/NOTOA Coalition's proposed  
12 local effects monitoring approach a  
13 reliable and efficient way of increasing  
14 our knowledge about the cause/effect  
15 relationships between (a) forest cover  
16 manipulation and moose populations; and  
17 (b) timber management activities and the  
18 effects on the aquatic environment."

19 You will note that in the next full  
20 paragraph, four lines down, it states:

21 "When asked the purpose of their  
22 proposal, Dr. Quinney stated quite  
23 unequivocally that the purpose was to  
24 'learn about cause/effect relationships  
25 between timber management activities and

1 the wildlife population than (one) is  
2 concerned about.'"

3 The response to that issue is found on  
4 page 721.

5 On page page 721 MNR submits the  
6 following:

7 "MNR's approach to provincial level  
8 monitoring of the effectiveness of  
9 provincial guidelines through the  
10 development and rigorous validation of  
11 quantitative models is a less risky, more  
12 efficient process to evaluate, and where  
13 necessary modify management practices and  
14 tools than the approach promoted by the  
15 OFAH/NOTOA Coalition.

16 Mr. Martel, all I have done now is I just  
17 read the very first submission on page 48 -- I mean  
18 721.

19 The second submission is that:

20 "Such rigorous model development and  
21 validation is necessary to ultimately  
22 focus local monitoring efforts on the  
23 collection of data which are crucial to  
24 the understanding of important  
25 cause/effect relationships."



1                   You may recall, Madam Chair, Mr. Martel,  
2           a number of witnesses throughout MNR's case, both in  
3           chief and in reply, dealt with the issue of monitoring,  
4           dealt with the issue of development of models and  
5           validating them.

6                   The last witness or the most recent  
7           witness to deal with that was Dr. Abraham and Dr.  
8           Steedman in MNR reply Panel No. 2.

9                   You will see when you go through the  
10          pages 716 to 721 there are many references to the  
11          evidence of those two witnesses on this subject matter  
12          and in some cases the evidence which is referenced are  
13          responses which were made to questions from the Board.

14                  I think I would like to just quickly go  
15          through and highlight some of the evidence which is  
16          referred to on those intervening pages because they  
17          make some points which I think without going through it  
18          may not be understood clearly.

19                  The first thing I would like to refer to  
20          is on page 717 in the last full paragraph where it  
21          states:

22                         "MNR experts testified that although  
23                         the local collection of data is an  
24                         important part of learning about  
25                         cause/effect relationships, to be useful

1           it must be collected in a structured way  
2           after the development and validation of  
3           predictive cause/effect models."

4           On page 718 it goes on to say in the  
5   second indented quote, this is Dr. Abraham:

6           "...we are not attempting in our  
7           monitoring approach here to replace local  
8           management or local adaptive monitoring  
9           of populations or habitat or other key  
10          factors... What we are saying is that  
11          before it is appropriate to do that [i.e.  
12          local effects monitoring], before it is  
13          appropriate to spend a lot of time  
14          gathering a lot of information which may  
15          be unnecessary or unimportant, we need to  
16          do this scale of research first."

17          If we turn over the page, page 719, it  
18   states in the second full paragraph:

19          "In this regard, Dr. Steedman was asked  
20          by Madam Chair to respond to the  
21          proposition that: 'MNR attempts to do  
22          cadillac research when it is overkill, it  
23          is not necessary."

24          He is also asked to explain why he  
25   thought MNR's resources were better devoted to very

1 stringent scientific studies as opposed to what had  
2 been suggested by some parties as being more practical  
3 and less expensive solutions.

4 I think it is worth going through the  
5 response, Madam Chair.

6 "Dr. Steedman responded..." you may  
7 recall,

8 "...that if one does not follow the  
9 more rigorous scientific approach, the  
10 alleged more practical and less expensive  
11 approach 'may well end up being more  
12 expensive to have field personnel  
13 collecting a lot of data and then  
14 submitting it to some central location  
15 and someone make sense of it at that time  
16 rather than to spend a year or two  
17 developing and testing the methods and  
18 making sure that that we have done our  
19 homework in terms of what we know about,  
20 for example, predictive relationships  
21 between timber management and sediment  
22 deposition in the streams, for example.  
23 So the research that we are doing, I  
24 think, will be quite productive and quite  
25 cheap compared to what might happen if a



1 provincial scale, army of water quality  
2 monitoring personnel were deployed to  
3 collect data. And as I said earlier,  
4 that would get you where you are going,  
5 but I am not sure that would be an  
6 effective way of doing it."

7 So the Ministry for the types of reasons  
8 set forth by Dr. Steedman have said in their submission  
9 on page 721, they have not said that local effects  
10 monitoring in the technical sense has no place in  
11 resource management.

12 They have said that when you are  
13 concerned about learning about cause/effect  
14 relationships, that MNR's approach - this goes back to  
15 our submission - MNR's approach to provincial level  
16 monitoring of the effectiveness of provincial  
17 guidelines through the development and rigorous  
18 validation of quantitative models is a less risky, more  
19 efficient process to evaluate, and where necessary  
20 modify management practices.

21 I would submit that the Board should be  
22 concerned that what it puts in place is an efficient  
23 way of doing things as opposed to an inefficient way.

24 Dr. Peter McNamee, who was a witness in  
25 MNR Panel No. 8, also dealt with this matter and his

1        comments on page 721 are of some assistance.

2                "I believe the suggestion may have been  
3                left with the Board that the approach  
4                that the OFAH/NOTOA Coalition was somehow  
5                going to be smaller in scope and scale  
6                than the provincial monitoring program  
7                and for that reason it should be  
8                adopted."

9                In addition to the comments made by Dr.  
10        Steedman, Dr. McNamee commented on that type of  
11        suggestion on the first indented quote on page 721  
12        where he says:

13                "I rather suspect, although I am not  
14                certain, that the scope and scale of that  
15                kind of effects monitoring program..."

16        and he is referring to the Coalition's proposal,

17                "...would be about the very same because  
18                we are still dealing with the same set of  
19                unknowns."

20                So you are involved in the same scope and  
21        scale, but it won't be as efficient and will have the  
22        kind of risk involved in it that Dr. Steedman and Dr.  
23        Abraham spoke of.

24                For those reasons, Madam Chair, and for  
25        the reasons set out in the balance of that chapter I

1 would submit that the Coalition's proposals for local  
2 effects monitoring not be accepted.

3 The last topic I would like to deal with  
4 is this issue about local effects monitoring and the  
5 fact that different parties have used it differently.

6 By the way, I would submit to you that  
7 one of the parties who did use the term local effects  
8 monitoring properly -- not properly, in the technical  
9 sense, which is the way the Ministry of Natural  
10 Resources has tried to use it throughout, was the  
11 OFAH/NOTOA Coalition.

12 When they say do local effects  
13 monitoring, we understand them to say do local effects  
14 monitoring in the technical sense to learn about  
15 cause/effect relationships and understanding them to  
16 say that is one of the main reasons we say that it is  
17 something that requires the development of validated  
18 models before you can have an efficient data collection  
19 system at the local level.

20 The issue of local effects monitoring is  
21 addressed, again, at page 730 -- I'm sorry, if I could  
22 just have a moment. 732 to 734.

23 As I indicated, the term local effects  
24 monitoring has been used differently by different  
25 parties and as a result, assuming that I am correct and



1       you accept the proposition that the parties have used  
2       that term differently, then the concern that that gives  
3       rise to is that the expectations as to what is being  
4       required or the expectations as to what is going to  
5       happen if one says I will do local effects monitoring  
6       or someone says do local effects monitoring will be  
7       different depending on who is talking and who is  
8       listening.

9               To put in another way, the expectations  
10       will be the same if and only if the two people who are  
11       speaking mean the same thing when they use that term.

12              It is on page 732 to -34 where a brief  
13       description is given of how that term has been used  
14       differently throughout the hearing by different  
15       parties.

16              You will note in the second full  
17       paragraph on page 732 it states that the various ways  
18       in which the terms local effects and local  
19       effectiveness monitoring have come to be used in this  
20       hearing is a matter which we considered.

21              "In its own evidence on this subject,  
22       MNR described the formal, technical  
23       meaning of 'effects and effectiveness  
24       monitoring program.'"

25              I would emphasize the words "formal

1 technical meaning."

2 It goes on and says that:

3 "MNR witnesses also explained that  
4 local staff can be involved in assessing  
5 effects and effectiveness 'in a sense.'  
6 What we are talking about here -- let me  
7 just continue.

8 "However, those witnesses made it clear  
9 that local staff cannot be expected to  
10 draw reliable inferences about  
11 cause/effect relationships in other than  
12 thoroughly obvious circumstances. For  
13 example, it is usually easy to tell when  
14 a water crossing is causing erosion;  
15 there is little need for sophisticated  
16 analysis to determine the cause of that  
17 effect. However, if one were to notice  
18 'sedimentation' in the absence of a water  
19 crossing it is not a simple matter to  
20 determine its cause. Therefore, in  
21 describing the 'non-technical'  
22 effects/effectiveness monitoring that  
23 could occur locally, as a basic minimum  
24 requirement..."

25 It is one of the things I would suggest

1       that the Board does when it imposes a planning process,  
2               "...MNR witnesses explained that the most  
3       appropriate way to describe that activity  
4       is to require records to be kept of  
5       observed undesirable conditions.

6       While the recording and analysis of this  
7       information is useful it cannot be  
8       properly described as 'formal' effects/  
9       effectiveness monitoring."

10       There is an example. If the person who  
11       is using the term local effects monitoring is using it  
12       in the non-technical sense and the person listening  
13       uses that in the formal technical meaning, a  
14       requirement or discussion about that would in fact be  
15       like two ships passing in the night.

16       From MNR's perspective, if MNR was  
17       ordered to do local effects monitoring, local effects  
18       monitoring is used by MNR in the formal technical sense  
19       and if someone orders the Ministry of Natural Resources  
20       to do that do they really intend to have the Ministry  
21       of Natural Resources conduct local effects monitoring  
22       in the formal technical sense or do they mean it in the  
23       less technical sense.

24       It is important to know because if it is  
25       in the more technical sense, then for the reasons



1       stated by Dr. Steedman, Dr. Abraham and others, that is  
2       something which is inefficient and risky to be done at  
3       the local level without the upfront work having been  
4       done first.

5                       I am not going to take much more time  
6       other than to say that the proposals by the Ministry of  
7       the Environment, when they talk about local  
8       effects/effectiveness monitoring, appear, because of  
9       our interpretation of what those words mean, to be  
10      requiring the technical, the formal technical type of  
11      effects/effectiveness monitoring be done at the local  
12      level. If that is the intention it gives rise to  
13      serious concern.

14                     If it is the less technical sense, then  
15      it appears that the terms and conditions of the  
16      Ministry of Natural Resources which deal with recording  
17      undesirable observed effects, the reporting of them in  
18      Reports of Past Forest Operations and the use of that  
19      information by technical committees when they consider  
20      revisions to implementation manuals seem to address the  
21      Ministry of the Environment's concern and it would be  
22      very pleasing indeed if we were advised that that was  
23      their intention and indeed our terms and conditions  
24      meet their intent.

25                     If I could have one moment, please.

1 MS. SEABORN: Madam Chair, perhaps it  
2 would be helpful, it would certainly be helpful to my  
3 client, if Mr. Freidin could give me the reference of  
4 where he is referring to in terms of MOE advocating a  
5 local effects/effectiveness monitoring program and if  
6 there is a particular term and condition of ours that  
7 he is privy to I think it may be helpful if we can know  
8 that now, if he would like to us to respond to that  
9 issue in our argument.

10 MR. FREIDIN: I will provide with you the  
11 term and condition over the noon break.

12 MS. SEABORN: Thank you.

13 MR. MARTEL: I thought you started out by  
14 saying that MOE seemed to be requiring a technical  
15 monitoring at the local level and then you seemed to  
16 switch, and maybe I missed it, that you would like or  
17 you thought they might be suggesting a less technical  
18 sense and quite frankly I -- maybe you can help me.

19 MR. FREIDIN: Let me try to put it again.  
20 If the words local effects/effectiveness monitoring are  
21 used in the technical sense, then a term and condition  
22 saying do it would require a technical sort of program.

23 Those words I believe -- and I will be  
24 able to provide Ms. Seaborn with places in their terms  
25 and conditions where they have added

1 effects/effectiveness monitoring and if they are  
2 interpreted in the technical sense, then it requires  
3 that kind of program.

4 Now, it may very well be and I think that  
5 maybe what they really are intending to do is to be the  
6 less formal and if that is the case I would suggest  
7 that they don't use the words local effects and  
8 effectiveness monitoring because those words give rise  
9 to certain expectations about what is going to happen,  
10 that those words give rise to different expectations in  
11 the minds of different people.

12 So I believe they are intending the less  
13 technical, but they will make that very clear or  
14 certainly clearer to the Ministry of Natural Resources  
15 if they delete the reference to doing local effects and  
16 effectiveness monitoring.

17 MS. SEABORN: Madam Chair, I don't like  
18 to interrupt Mr. Freidin, but I don't want our position  
19 to be mischaracterized.

20 I don't know of anywhere in our terms and  
21 conditions where we use local effects/effectiveness  
22 monitoring and I would like Mr. Freidin to make his  
23 position clear on the record after noon hour on that  
24 point.

25 There is also a statement in your



1 argument at page 732 about MNR interpreting the use of  
2 a term and if we haven't used the term in our  
3 conditions, then I really think that this is a bit of a  
4 red herring.

5 MR. FREIDIN: I think what our concern is  
6 you haven't used the word local, if I can use the word  
7 local.

8 You have used the words effects and  
9 effectiveness monitoring and you have inserted it in  
10 the middle of MNR terms and conditions that deal with  
11 compliance monitoring, for example, and effects  
12 monitoring.

13 When you say effects monitoring and you  
14 say it do it as part of timber management planning at  
15 the FMU level that that is the same as saying do it at  
16 the local level and it is imposing -- if the word  
17 effects monitoring is used in the formal technical  
18 sense, that by inserting it into one of our terms and  
19 conditions, if it is accepted in the way that you have  
20 proposed it and is accepted as having the formal  
21 technical meaning, we will end up with a term or  
22 condition which requires the Ministry of Natural  
23 Resources to do technical formal effects monitoring at  
24 the FMU level which we say is the local level and which  
25 we say is inappropriate.

1                   Some of the places where you have added  
2           it are in your Appendix 18 of your terms and  
3           conditions. In Appendix 18, Madam Chair -- you  
4           actually might as well go to MOE's argument and turn to  
5           the appendices, page 23. Actually, it is the third  
6           last page of their argument.

7                   If I could just have one moment so I can  
8           refer to all of these provisions.

9                   MS. SWENARCHUK: Madam Chair, couldn't  
10          they just sort it out between them and report back to  
11          us rather than doing all of this on the record?

12                  MS. SEABORN: That's fine with me, Madam  
13          Chair. My only concern was that I thought that Mr.  
14          Freidin had mischaracterized his position.

15                  I think when he explained it the second  
16          time he was closer to what was in the terms and  
17          conditions and I didn't want an impression left on the  
18          record that we had used this word 'local' in our  
19          proposals and in our conditions which is what Mr.  
20          Freidin had argued to the Board and that was my only  
21          concern. So we could certainly discuss it and move on  
22          from my perspective.

23                  MADAM CHAIR: Thank you, Ms. Seaborn.

24                  The Board is aware of the wording in your  
25          terms and conditions to the effect of compliance,

1 effects and effectiveness with respect to monitoring  
2 proposals.

3 MR. FREIDIN: I think really with that  
4 discussion I can just move on to the next topic, Madam  
5 Chair. That leads me to item No. 9, Madam Chair,  
6 government policy. The Board has asked a number of  
7 questions regarding its authority or jurisdiction to  
8 change or effect government policy.

9 That issue has been addressed in the  
10 argument, MNR argument, in a number of places and in  
11 some of those situations there is a further reference  
12 back to responses to Board interrogatories.

13 The issue is dealt with most extensively  
14 in our Chapter 4.2 which begins at page 842. So that's  
15 Volume 2, page 842.

16 I believe the best way to state clearly  
17 the MNR's position on that matter is to review with you  
18 the first three submissions which are contained in that  
19 chapter. The first one being at page 844:

20 "MNR submits that an administrative  
21 tribunal may accept evidence concerning  
22 the existence and contents of government  
23 policies which are relevant to the  
24 matters before that Board."

25 "As a matter of evidence..." This is at



1 the bottom in the bold. Sorry, page 844.

2 "MNR submits that an administrative  
3 tribunal may accept evidence concerning  
4 the existence and contents of government  
5 policies which are relevant to the  
6 matters before that Board. As a matter  
7 of evidence, other parties may  
8 cross-examine the government witnesses  
9 concerning matters such as the existence  
10 of and the factual correctness of those  
11 relevant policies."

12 The factual correctness is just to  
13 understand what the policy is.

14 At page 845, the second submission states  
15 that:

16 "When relevant policies are in evidence  
17 before an administrative tribunal  
18 cross-examination is allowed and  
19 conclusions about the existence and  
20 factual correctness of the policy may be  
21 drawn by the Board unless the legislation  
22 under which the Board is constituted  
23 specifically required the Board to accept  
24 specific government policies as facts."

25 I will expand on some of these in a

1 moment.

2 Perhaps most importantly at page 853 --  
3 perhaps it would have been clearer if I went directly  
4 to that matter. I think the first two that I referred  
5 to really deal with how the Board deals with policies  
6 sort of in the context of the hearing as a procedural  
7 matter and I think I may have confused you somewhat by  
8 referring to them.

9 I think the third one is really the one  
10 we should concentrate on and that is that:

11 "In the case of the Environmental  
12 Assessment Board the Board has the  
13 authority..." that is you can make an  
14 order,

15 "...to create, change or order creation  
16 of or change to certain government policy  
17 provided the following things: Provided  
18 that the policy in question must be  
19 directly related to the undertaking, the  
20 policy where one currently exists must  
21 have been made by the Proponent, the  
22 Proponent must have the authority and  
23 ability to create to comply with or to  
24 change the policy and the policy change  
25 must not require a change to or the

1                   creation of legislation."

2                   Madam Chair, Mr. Martel, the balance of  
3                   this chapter identifies specific questions that the  
4                   Board asked about what its jurisdiction was in relation  
5                   to certain subject matters dealing with things such as  
6                   compensation systems, the jurisdiction to deal with  
7                   preferential hiring practices, the ability to order the  
8                   hiring of staff by MNR and that sort of thing.

9                   There are other places within the  
10                  argument where issues of the same nature in relation to  
11                  jurisdiction are met and most particularly regarding  
12                  the Board's authority to deal with what was described  
13                  in your questions as the statutory regime in relation  
14                  to pesticides, and you will find the response to at  
15                  page 89 and 90 of the argument.

16                 You asked questions in relation to the  
17                 timber production policy and you will find answers or  
18                 responses to that on pages 38 to 39 of the written  
19                 argument and the answers to all of those questions are  
20                 based on the application of the principles which are  
21                 found in our submission No. 3 on page 853 of the  
22                 argument.

23                 As an example, and I don't intend, Madam  
24                 Chair, Mr. Martel, to go through each of them, as an  
25                 example, where you ask questions about the Board's



1 jurisdiction to order the hiring of certain staff, we  
2 have indicated that that is a matter which is beyond  
3 the control of the Ministry of Natural Resources but is  
4 dealt with in other parts of government and that  
5 although the Ministry of Natural Resources might from  
6 time to time want a lot more staff and a lot more money  
7 to do things, those issues are not within the control  
8 of the Proponent and because of that the application of  
9 the principles or one of the principles which is set  
10 out on page 853 in our third submission would preclude  
11 the Board from ordering the Ministry of Natural  
12 Resources to do those things.

13 It may be of assistance, Madam Chair,  
14 that when you are asking yourself the question: Do we,  
15 the Board, have authority to order a change in policy  
16 "x" or policy "y" to remind yourselves or to appreciate  
17 that the powers that you exercise are those of the  
18 Minister of the Environment under the Environmental  
19 Assessment Act.

20 You, therefore, in my submission cannot  
21 do something that the Minister of the Environment could  
22 not do and just as the Ministry of Natural Resources --  
23 pardon me, we will go back.

24 Ms. Grier, the Minister of the  
25 Environment, and perhaps other ministers may from time

1 to time like to dictate to cabinet what government  
2 should do, they do not have that power.

3 For example, in my respectful submission,  
4 the Minister of the Environment, and your powers are  
5 not different than hers, could not dictate to cabinet  
6 what the timber production policy should be and if I am  
7 correct than either can the Board.

8 In the same vein, I would refer you to  
9 page 851 of our argument where it states in the second  
10 last full paragraph, that's page 851 -- I make the same  
11 point, the Ministry makes the same point using a  
12 different example and it says:

13 "In exercising its decision-making role  
14 in the environmental assessment, the EA  
15 Board is exercising the authorities of  
16 the Minister of the Environment in  
17 getting approval. The Minister of the  
18 Environment does not have direct control  
19 over the funding levels available to her  
20 or the staffing and qualification levels  
21 in her own ministry, let alone those of  
22 other ministries."

23 It goes back to what I was saying before,  
24 MNR might want more money, could use more staff. It is  
25 not within the control of MNR.

1           The Minister of the Environment is in the  
2           same position in relation to her staffing and  
3           qualifications and it, therefore, seems to follow that  
4           if she can't do it for her own staff, then she is not  
5           in a position to do it for someone else's staff and if  
6           you are exercising her powers you can't order that  
7           either.

8           Those are the submissions that I intend  
9           to make with respect to government policy.

10          MR. MARTEL: Obviously the Minister of  
11          the Environment over the last number of years was not  
12          able to exercise its opinion with respect to  
13          pesticides.

14          How then can this Board be requested to  
15          make that decision? If MNR or MOE couldn't get by the  
16          cabinet, how can the Board then order that you get by?

17          MR. FREIDIN: Because, Mr. Martel, if you  
18          look at the criteria or the principles on page 853--

19          MR. MARTEL: That's what I am looking at.

20          MR. FREIDIN: --you can make decisions in  
21          relation to how timber management occurs in the field.  
22          You have been charged with that responsibility and  
23          although you can't -- let me go back.

24          MR. MARTEL: Look at C.

25          MR. FREIDIN: Yes.



1                   MR. MARTEL: The proponent must have the  
2 authority to create, to comply with or to change the  
3 policy.

4                   If I follow the logic you have been  
5 giving to us for some time, that MOE has the same -- we  
6 have the same authority as MOE, MOE can't say to the  
7 government, because the government has the final power  
8 with respect to funding through the treasurer, you are  
9 not getting any more money or any more staff, then how  
10 can we overrule the government policy when MOE or MNR  
11 aren't in a position to overrule the government?

12                  MR. FREIDIN: Which government policy are  
13 you referring to?

14                  MR. MARTEL: I am talking about the  
15 government policy with respect to the application of  
16 insecticides in forestry where the three subsequent  
17 governments have all said: No, you are not using  
18 pesticides and C seems, unless I am misreading it badly  
19 and unless I haven't followed your logic carefully, in  
20 fact that's precisely what I thought you were telling  
21 us.

22                  MR. FREIDIN: There are two things I want  
23 to deal with. I want to address that one generally and  
24 I want to go back and read to you what our specific  
25 submissions are in relation to the pesticide issue.

1 MR. MARTEL: All right.

2 MR. FREIDIN: I think the situation that  
3 you are describing where the government -- let's assume  
4 that the government policy is as you have stated it.

5 That policy of government which overrode  
6 what perhaps MNR might want to do was done outside the  
7 context of a hearing such as this. Just as this Board,  
8 if you make a decision that affects timber management  
9 and it made it may indirectly affect the achievement of  
10 a certain policy -- let me give you this example.

11 Let's say that you make an order in  
12 relation to timber management and how it can be carried  
13 out, you can do that, that's what you are doing. Let's  
14 say that if that order was complied with, it would make  
15 the ability to achieve a provincial policy such as the  
16 timber production policy impossible. That's okay from  
17 a legal point of view.

18 If you make a decision about how timber  
19 management is carried out, the fact that that might  
20 indirectly cause government to be unable to achieve a  
21 policy, then government will just have to deal with  
22 that. The government has a couple of options when that  
23 happens.

24 Let's assume that they accept the Board's  
25 decision and then their policy will -- they will some

1 difficulty in achieving their policy. Government in  
2 the context -- I am almost hesitant to do this because  
3 it may confuse the issue. If it does I will kick  
4 myself. Let me stop there for a moment.

5 Let me take you to the actual submissions  
6 in relation to the pesticide issue and see whether that  
7 answers your question before I may be confuse things.

8 Could you turn to page 89 and 90 of  
9 Volume 1.

10 MS. SWENARCHUK: Which page?

11 MR. FREIDIN: I think it is page...

12 MR. BERAM: I think it is 181.

13 MR. FREIDIN: 181.

14 If you could turn to page 184. Let's go  
15 right back to 182. Let's go through these one at a  
16 time and, as I say, I think the difficulty I am having  
17 is I am not a hundred per cent I am understanding the  
18 specific scenario that you are concerned about.

19 MR. MARTEL: Let me try running it by you  
20 again.

21 You said, I think I wrote this down  
22 correctly, our powers are those of MOE and the minister  
23 under the Environmental Assessment Act and if the  
24 Minister of MOE can't do something, then the Board  
25 can't order something.



1 I think you went on to say, therefore,  
2 the minister can't decide, for example, to dictate to  
3 cabinet with respect to a timber production policy.  
4 The MOE can't force that because it is not in their  
5 bailiwick and they can't do it.

6 So, consequently, you now have this  
7 dilemma. There is a policy. You have MNR that up  
8 until '85 dealt with pesticides and insecticides, the  
9 minister made the decision, the minister of the day  
10 Mike Harris, made the decision that here is a policy  
11 and I am changing it.

12 MR. FREIDIN: What was the policy and  
13 what did they change it to?

14 MR. MARTEL: I am talking about the  
15 moratorium on the use of insecticides and I think it  
16 was Harris that made the first move which was  
17 subsequently followed on by Vince Kerrio which has now  
18 been adopted by Bud Wildman. Three different  
19 governments.

20 Now, if I go back to what you said to me  
21 earlier, if a minister can't dictate to the cabinet  
22 what the policy of the government is going to be with  
23 respect to any given issue, in this instance  
24 pesticides, I am looking at C at page 853 and it says  
25 the Proponent must have the authority and the ability

1 to create, to comply with or to change the policy.

2 Obviously, the Minister of Natural  
3 Resources has not had the ability to change the policy  
4 of three governments, of three governments. The  
5 Minister of Natural Resources has not had the power to  
6 change the policy back to what it was originally. The  
7 governments have ordered, three subsequent governments  
8 have ordered no application of chemical insecticides  
9 aerially. Three of them.

10 Now, if I look at C and I look at what  
11 you have told me, I want you to tell me how it is that  
12 this Board can then say to the government through the  
13 Minister of Natural Resources: Even though you don't  
14 have the power to get the policy back to where it was  
15 originally, even though three cabinets have said no  
16 way, this Board has the authority, contrary to what you  
17 say in C, to say you must change it, even though the  
18 Minister of Natural Resources doesn't have the  
19 authority to change the policy when confronted by  
20 overall government policy.

21 Now, that's where I am coming from.

22 MR. FREIDIN: Can I just have a moment.

23 MR. MARTEL: Do you understand where I am  
24 coming from?

25 MR. FREIDIN: I think so.

1                   MADAM CHAIR: Mr. Freidin, do you  
2 understand Mr. Martel's question?

3                   MR. FREIDIN: Well, there are many  
4 aspects to it. I think I understand it and I think  
5 perhaps if I was given the lunch break to consider  
6 putting together a response I might be able to address  
7 the issue more expeditiously.

8                   I think there is something within the  
9 question that is somewhat confusing and I would like  
10 some time to think about it.

11                  MADAM CHAIR: Let's take our lunch break  
12 and we will be back at 1:30.

13 ---Luncheon recess at 12:00 p.m.

14 ---On resuming at 1:35 p.m.

15                  MADAM CHAIR: Good afternoon, Mr.  
16 Freidin. We're ready to get started again. You gave  
17 us an estimate yesterday that you would be finished  
18 about 2:30.

19                  MR. FREIDIN: I did give that estimate  
20 yesterday. I will try to keep to it, but may go over  
21 that.

22                   I would like to go back to where we left  
23 off and make the following comments which hopefully  
24 will be helpful.

25                   Firstly, when I said, or made the



1 submission that the Board has the same power as the  
2 Minister of the Environment, I was referring to the  
3 Minister of the Environment's power under the  
4 Environmental Assessment Act, not all the powers which  
5 you might have under a whole bunch of other statutes.

6 And under the Environmental Assessment  
7 Act I'm referring to the powers set forth I think in  
8 sections 12 and 14 dealing with whatever the sections  
9 are dealing with, the acceptance and approval of an  
10 environmental assessment and an undertaking.

11 Mr. Martel, you described the situation  
12 where three successive Ministers of Natural Resources  
13 have said that, notwithstanding the availability of  
14 certain chemicals under the Pesticides Act, the fact  
15 that there are some chemicals that are legally useable  
16 that they would not use chemical insecticides in  
17 forestry operations, the fact that those products are  
18 available under the Pesticides Act does not require MNR  
19 to use them.

20 As I've just stated, three successive  
21 Ministers have decided not to use them. All the  
22 Ministry of Natural Resources is asking you to do in  
23 relation to those chemical insecticides is to leave  
24 that situation as it is, leave the situation in which  
25 those decisions were made as it is; and, that is, to

1 maintain the status quo.

2 By you saying in your order that chemical  
3 insecticides are available for use, and that is a  
4 request which is being made, that order in no way  
5 requires MNR to use chemical insecticides and it does  
6 not restrict or would not restrict the ability of  
7 future Ministers of Natural Resources to decide that  
8 they will not use them either.

9 In other words, your order would not  
10 constitute a legal requirement to use those chemicals  
11 and perhaps, most importantly, nor would your order in  
12 any way restrict or limit the ability of the government  
13 as a whole to decide, as a matter of Cabinet policy or  
14 by law - by that I mean through passing legislation -  
15 to say that those products will not be used.

16 Your order will not in any way restrict  
17 or limit the ability of the government as a whole to  
18 decide as a matter of Cabinet policy or as a matter of  
19 law that these products will not be used.

20 Therefore, all the Ministry of Natural  
21 Resources is saying to you and requesting is that you  
22 not change the status quo, that you don't change the  
23 process. I think that's enough.

24 MR. MARTEL: I guess then I just leave it  
25 up to those parties who are asking to come back to us

1 and tell us what authority they think we have to change  
2 that.

3 Because, as you know, some of the parties  
4 are asking us to suggest strongly, and OFIA in its  
5 conditions want us to, and Forests for Tomorrow on the  
6 other side of the ledger want us to do things  
7 differently than what you're requesting.

8 And I guess that's what prompted my  
9 concern is, on one hand we can order the status quo and  
10 in conjunction with -- I think you added to what you  
11 said earlier by saying under the Environmental  
12 Assessment Act, but we have got two different positions  
13 in addition to yours requesting totally different  
14 things, and I guess I'm looking for the authority which  
15 says you can do either one or the other or the status  
16 quo; in other words, that is the question that has been  
17 before my mind for some time.

18 MR. FREIDIN: I want to make it clear, I  
19 hope we have made it clear in our written material, Mr.  
20 Martel, that the Board does have the jurisdiction to  
21 restrict, to impose further restrictions on the use of  
22 chemical insecticides than is presently the case in the  
23 statutes.

24 If you find, based on the evidence, you  
25 come to the conclusion that there is a reasonable basis



1 on which you could impose a restriction on the use of  
2 chemical insecticides that, as a matter of law, is  
3 within your jurisdiction.

4 The issue between the parties is whether,  
5 based on the evidence, that is a term and condition  
6 that you should impose. And of course we're talking  
7 about the restriction of chemical insecticides for the  
8 purposes of forestry or for timber management.

9 The next matter I would like to deal with  
10 is a couple of matters which I dealt with almost right  
11 at the beginning of my submissions yesterday and you  
12 will recall that I was asking the Board to accept a  
13 number of propositions which arose from the Board's  
14 ruling that planning was part of the undertaking.

15 On one of those submissions I think I  
16 only made half of the submissions that I wanted, and in  
17 one particular portion where I said the Ministry of the  
18 Environment agreed with something, I think I may have  
19 made a mistake on that or left the wrong impression. I  
20 want to go back and just clarify those two matters.

21 The material in volume No. 1 of MNR's  
22 argument where I didn't say everything that I think was  
23 necessary was in relation to the third item referred to  
24 at the bottom of page 9.

25 And the submission, you recall this is a

1 proposition, I will state the proposition that I would  
2 ask the Board to accept and indicate their acceptance  
3 of in their decision, and that is, that what the Board  
4 decides is the undertaking in this case; put it another  
5 way, what the Board decides is the undertaking in this  
6 case is in no way determinative of what the definition  
7 of an undertaking will be or what the undertaking will  
8 be -- sorry, will in no way be determinative of what  
9 the undertaking will be in any other environmental  
10 assessment.

11 I understand that it is with that  
12 proposition that the Ministry of the Environment agreed  
13 and I understand that to be the case as a result of  
14 their argument on page 24 and 25.

15 The second matter that I want to address  
16 is my concern that I may have left the wrong impression  
17 or delivered sort of the wrong message when I spoke  
18 about this particular item.

19 If I left the impression that I was  
20 saying that the planning process to be used in an  
21 individual environmental assessment was the one that  
22 you approve in this environmental assessment, that  
23 wasn't my intention. The planning process which will  
24 be used in any individual environmental assessment will  
25 be the appropriate planning process -- will be the

1 appropriate planning process for the environmental  
2 assessment in relation to that undertaking, whatever it  
3 may be.

4 I am talking about now a bump-up. If  
5 there is a bump-up request and there is an individual  
6 environmental assessment as a result of that, the  
7 planning process which will be used in that individual  
8 environmental assessment will be one which is  
9 appropriate for that environmental assessment in  
10 relation to the undertaking as defined for the purposes  
11 of that individual environmental assessment.

12 The next area I would like to go into  
13 then is the next item on my outline, item No. 10,  
14 Continuing Developments.

15 Madam Chair, a considerable amount of  
16 evidence has been given regarding ongoing initiatives  
17 within MNR and they are described in MNR's reply panel  
18 No. 3 and, more particularly, are discussed in MNR's  
19 argument Chapter 4.1. Those initiatives cover a wide  
20 spectrum of subject matters and I ask you to turn to  
21 volume No. 2 of MNR's argument, page 737.

22 Again, my purpose of asking just to turn  
23 to that index is, by a quick review of that index I  
24 shorten my submissions in relation to this subject  
25 area, and I would suggest that if you go through that



1 index very quickly and you see the subject matters that  
2 are covered, including things such as information  
3 collection and management in the second heading, which  
4 involves all of the initiatives spoken to by Dr.  
5 Osborn, a forest ecosystem classification, spoken to my  
6 Dr. Euler, the forest ecosystem classification work  
7 which is ongoing to, in fact, complete the FEC system,  
8 initiatives in relation to mapping effects, the  
9 Northland Ontario wetlands evaluation and areas of  
10 natural and scientific interest work, growth and yield,  
11 long-term site productivity study, vegetative  
12 management alternatives program, forest fragmentation  
13 and biodiversity program, assessment of social and  
14 economic impacts related work and work being done in  
15 relation to analytical methods related to both visual  
16 resource management, landscape management methodologies  
17 and habitat supply modeling, geographic information  
18 systems, and training and professional development.

19 I would submit that just a review of the  
20 many initiatives that MNR has ongoing is an indication  
21 of its seriousness or the seriousness with which it is  
22 approaching resource management in the area of the  
23 undertaking.

24 It is submitted that MNR is approaching  
25 these subject areas and initiatives in a reasonable,

1 methodical and responsible fashion, that its approach  
2 to these matters is similar to other large resource  
3 management agencies that have or are addressing these  
4 matters and that, in some cases, MNR has progressed to  
5 the same point of development as other jurisdictions  
6 and, in some cases - and I'm thinking primarily of the  
7 evidence of Dr. Osborn in relation to GIS - have moved  
8 beyond.

9 I would also submit that the  
10 implementation of some of these initiatives as a  
11 routine matter in timber management operations across  
12 100 management units is not something which will or can  
13 occur overnight.

14 I've already made submissions regarding  
15 suggestions for interim solutions to improve  
16 silvicultural effectiveness record-keeping and  
17 reporting -- pardon me, record-keeping and tracking,  
18 and I refer you to Dr. Osborn's comment about: Let's  
19 do it right, let's do it properly, let's not have  
20 another interim solution.

21 Many of the initiatives that I have  
22 listed and that we just went through very quickly in  
23 the index to our Chapter 4.1, other parties are urging  
24 the Board to impose time limits or to set schedules,  
25 which the Board would identify specific products of the

1 initiatives, or to identify criteria which will  
2 influence the direction in which the initiatives should  
3 go or which might influence the products to be  
4 delivered at the end of the programs.

5 In some cases the parties seeking such  
6 terms and conditions advocate them on the basis that if  
7 the Board doesn't make such orders MNR cannot be  
8 expected to follow through on these initiatives in a  
9 responsible way.

10 Madam Chair, Mr. Martel, I urge the Board  
11 to reject those suggestions and I submit that MNR has  
12 demonstrated over the last four and a half years before  
13 you that it is not a resource management agency which  
14 has its feet stuck in the mud, that it is not behind  
15 the times or that it has not advanced scientific  
16 knowledge and instituted improved operational  
17 management in a reasonable way.

18 Quite the contrary, I submit that your  
19 observation from time to time throughout the hearings,  
20 that things seem to be changing so quickly since the  
21 hearing started, is an indication of the opposite, that  
22 MNR in fact is responsible, that it is forward looking,  
23 and that it is a forward-moving resource management  
24 agency.

25 It is my submission that, in some cases,



1 those advocating specific products within specific  
2 schedules are, in many respects, focusing too much on  
3 concepts without either understanding or appreciating  
4 or giving due regard to the practical significance of  
5 doing things right in a dynamic system where there is  
6 scientific uncertainty, that they do not appear to  
7 appreciate the size of the area of the undertaking, or  
8 the costs of their proposals, or the limitation in  
9 terms of trained people being available, even if the  
10 funds were not a limiting factor.

11 In addition, I would submit that the  
12 great weight of evidence of experienced experts,  
13 particularly from Ontario, who testified on these  
14 matters support MNR's responsible approach to the  
15 initiatives which I have outlined.

16 I want to refer to a couple of the  
17 initiatives which were the subject matter of more  
18 discussion than others. If I can begin that by  
19 referring you to page 819 of MNR's argument where there  
20 is discussion of habitat supply analysis.

21 At the bottom of page 819 there's an  
22 issue that says:

23 "What will happen while habitat supply  
24 modelling is being evaluated for use in  
25 Ontario?"

1                   And I will submit that after we go  
2 through these sections that they provide support for  
3 some of my submissions about where MNR is in relation  
4 to this particular initiative in relation to other  
5 jurisdictions and whether it is dealing with the matter  
6 in a responsible way.

7                   Mr. Watt, you recall, works at the TDU in  
8 Timmins and has extensive experience in modeling, was  
9 involved through part of the exercise in New Brunswick  
10 when they were developing HSA, and has worked with a  
11 number of people, particularly Dr. Thomas and Dr.  
12 Baskerville, who testified at the hearing.

13                   I think primarily as a result of spending  
14 time with Dr. Baskerville, that was one of the basis on  
15 which the Board also felt that he could be called as an  
16 expert in that context.

17                   Mr. Watt says:

18                   "We feel that our current approach to  
19 the development and implementation of  
20 habitat supply modeling is not  
21 significantly different than that of  
22 other jurisdictions."

23                   The bottom of page 819:

24                   "We're following the same kind of  
25 approaches that were applied in New

1 Brunswick and British Columbia, in  
2 Alberta, in the United States. In the  
3 interim, the OMNR, we continue to guide  
4 wildlife habitat management with the  
5 existing guidelines and implementation  
6 manuals which currently capture our  
7 state-of-the-art knowledge of wildlife  
8 habitat requirements."

9 He goes over the page and talks about the  
10 differences between New Brunswick and Ontario in terms  
11 of the urgency with which certain matters have to be  
12 dealt with and talks about the rate at which things  
13 were done in New Brunswick, and he notes in the first  
14 full paragraph, in terms of New Brunswick, he says:

15 "One should note that, in beginning  
16 the implementation of the HSA approach in  
17 New Brunswick, the province was dealing  
18 with only 10 "forest management units"  
19 which were overlapped by 27 "wildlife  
20 management units". Obviously, in  
21 Ontario, MNR is dealing with a  
22 substantially larger and more diverse  
23 land-base, and a more diverse set of  
24 information and management needs."

25 That, I would submit, is an important



1 factor to consider when assessing where MNR is in  
2 relation to the development of any of these  
3 initiatives.

4 Mr. Watt refers to British Columbia and  
5 he says:

6 "In British Columbia, priorities were  
7 set to determine where HSA should be  
8 used. At present, it appears that this  
9 method --", I'm sorry, this is not a  
10 quote.

11 The witness statement says:

12 "In British Columbia, priorities were  
13 set to determine where HSA should be  
14 used. At present, it appears that this  
15 method has been used in two "prototype"  
16 areas, one being a portion of Vancouver  
17 Island, for blacktailed deer habitat, and  
18 other being a location in the interior,  
19 where habitat for Roosevelt elk is being  
20 modelled."

21 You may remember, Madam Chair, Mr.  
22 Martel, that in my cross-examination of Dr. Page who  
23 was called in OFAH panel 7, I was eager to find out  
24 exactly how extensive the use of those models were in  
25 British Columbia, and it was through that

1 cross-examination that it was determined that they were  
2 used in two areas on Vancouver Island, they weren't  
3 being used across the entire province of British  
4 Columbia.

5 Indeed, as I understand his evidence, and  
6 I gained this understanding from Volume 354, page 61815  
7 to 818, that the models that Dr. Page was talking about  
8 had not been given to industry because they were too  
9 crude, but indeed in British Columbia they were testing  
10 the model to more firmly establish its credentials from  
11 a scientific validity perspective, in those words, to  
12 more firmly affirm its credentials from a scientific  
13 validity perspective are the words which appear on the  
14 pages which I provided to you. Just a note here, if  
15 they're not there you will find them in OFAH panel 7 in  
16 paragraph 42.

17 Mr. Watt continues at the bottom, page  
18 821:

19 "I'd just like to add one more point,  
20 and that is that there is no reason to  
21 suspect that professional biologists and  
22 foresters in Ontario are different from  
23 professional biologists and foresters in  
24 any other jurisdiction, and that's that  
25 when a new technology and new information

1 comes along that allows them to do a  
2 better job, they will find ways to use  
3 that...it's really a matter of timing,  
4 when we're going to be ready, and we  
5 really just don't know all of the answers  
6 yet."

7 I want to refer to some of the evidence  
8 of Dean Baskerville, and if we turn to page 825 it  
9 states in the first full paragraph:

10 "In the context of "adaptive  
11 management" for wildlife, Dr. Baskerville  
12 did have some comments about the position  
13 of Ontario as compared to other  
14 jurisdictions, and the time required to  
15 make production-oriented planning for  
16 wildlife habitat operational."

17 And we have set out in the addended  
18 portion an excerpt from Dr. Baskerville's evidence, and  
19 I would start in the second paragraph where he begins  
20 after saying: "So I think...", he says:

21 "...the differences are not  
22 professionally deep, they have to do with  
23 application, making the thing happen...at  
24 the scale [of] 40 million hectares of  
25 forest...



1           It seems to me that a concern that is  
2           more predominating would be that, in  
3           terms of the practical reality on the  
4           Moosonee management unit or whatever  
5           management unit, what approach...can be  
6           initiated now in this forest for the  
7           database that exists, for the people  
8           skills that are available to handle data  
9           and interpret it, and for...access to the  
10          tools to implement whatever planning  
11          process you have.

12          Those to me would be the more relevant  
13          questions than is one approach better  
14          than the other [i.e guidelines versus  
15          HSA]. I would hope neither one would be  
16          frozen..."

17          Then he makes the comment:

18                 "Don't take off your lifejacket until  
19                 you are sure you have learned to swim."

20          Dean Baskerville continues on the next  
21          page and he states that the main message, and he was  
22          talking about the implementation of HSA at this  
23          particular point:

24                 "The main message there is that you  
25                 couldn't start on the whole of the

1 province at once. I don't think that is  
2 technically feasible."

3 The witness statement continues:

4 "Dr. Baskerville also agreed  
5 "unequivocally" that this can only  
6 practically be done in an incremental way  
7 starting with one unit or two units, as  
8 oppose to dismantling the existing system  
9 and starting from scratch."

10 The quote from the transcript has Dr.  
11 Baskerville stating:

12 "...there is a structure there...',"   
13 he's referring to in Ontario, and particularly in MNR:

14 "...there is a structure there, it is  
15 operating and functioning...well in some  
16 cases, better in others, and there is a  
17 range. The issue is: how do we move to  
18 get better, not how do we create a  
19 revolution."

20 And I refer to that quote primarily to  
21 say that things, at least according to Dr. Baskerville,  
22 are reasonably done in an incremental way.

23 I think if you assess the Ministry of  
24 Natural Resources' evidence in relation to this topic  
25 of habitat supply analysis and you examine the evidence

1 of Mr. Watt and Dr. Abraham, Dr. Euler, for example,  
2 the conclusion you should come to is that MNR is  
3 examining this matter in a responsible way, that it  
4 should not be something which should be ordered by the  
5 Board to be implemented and used across the area of the  
6 undertaking at this present time and for the kind of  
7 reasons and the kind of comments made by Mr. Watt and  
8 Dr. Baskerville, having the matter dealt with in the  
9 fashion set forth in the Ministry's terms and  
10 conditions is a reasonable way to go.

11 In relation to -- if I can just have one  
12 moment, please.

13 If I could move on to GIS. If you look  
14 to page 827 and the few pages that follow, a very  
15 similar message is given by Dr. Osborn. In particular,  
16 if I refer to the last indented quote on page 827 in  
17 relation to GIS, Dr. Osborn states that:

18 "There's been some inferences that you  
19 can walk down the street to the local  
20 computer store, buy a package of  
21 shrink-wrapped GIS software, bring it  
22 back again and plug it into your machine  
23 and away you go.

24 And, yes, you can, but you won't get  
25 very far."



1 Dr. Osborn continues on 828:

2 "...in comparison with the comparable  
3 institutions in...other provinces of  
4 Canada, MNR's usage [of GIS] is probably  
5 as good if not better than other...  
6 comparable institutions."

7 And he goes on and clarifies what he  
8 means by comparable institutions and he says:

9 "And I throw the caveat up rather  
10 deliberately...[I mean) institutions that  
11 worry about the whole range of natural  
12 resources, and by that I mean not just  
13 the [forests] end, but [that] cover a  
14 whole span of natural resources the way  
15 that MNR is mandated."

16 He goes on and he indicates that in some  
17 jurisdictions specific departments have more GIS  
18 capability than MNR, but his evidence taken as a whole  
19 I think, Madam Chair, demonstrated that the GIS program  
20 is being developed in a way in which it is hoped it  
21 will be of use, not just to foresters practising timber  
22 management, but rather that it will be a system which  
23 will be useable to improve the management of other  
24 resources and to facilitate putting the principle of  
25 integrating resource management into a situation where

1       it will be practised even better than it is.

2                   And that that is the reason that it is  
3       taking a bit longer in Ontario to develop GIS, and I  
4       would submit that that is a valid reason.

5                   And in relation to the issue of  
6       comparable institutions, there was a Board  
7       interrogatory in relation to the use of GIS by Ontario  
8       and whether they were somehow further ahead than the  
9       Ministry of Natural Resources in that regard.

10                   I don't intend to review that fairly  
11       lengthy Board interrogatory. The bottom line was that  
12       it wasn't a comparable comparison to be looking Ontario  
13       Hydro and seeing what they were doing and saying MNR  
14       should be doing that because they are different  
15       situations, but I just remind the Board of that  
16       particular response. Board interrogatory 95.

17                   Page 829 there's another issue as to  
18       whether -- it says:

19                   "Does it really have to take this long  
20                   for the development and for operational  
21                   implementation of Geographic Information  
22                   Systems (GIS) technology across the area  
23                   of the undertaking?"

24                   "The quick response...", from Dr.  
25       Osborn:

1 "...is if you're going to do it at all,  
2 do it right. And in that context, given  
3 the complexity of the applications where  
4 this technology is of importance, my  
5 professional reaction is "yes."

6 And I don't think I will take the time to  
7 review any other portions of that argument.

8 I would just commend to you the  
9 submissions on page 833. MNR is asking you to accept  
10 each of them. I would just highlight the first  
11 sentence of item (c) and, that is, that:

12 "MNR is approaching the development of  
13 its GIS capability in a measured and  
14 responsible fashion."

15 There are comments in the argument, and  
16 not just comments, but the subject matter of  
17 biodiversity is addressed in the argument and you have  
18 heard how MNR is doing work in relation to that subject  
19 matter.

20 FFT have specific recommendations for  
21 interim approaches to landscape management as a means  
22 of addressing concerns for biodiversity. That is how I  
23 would characterize the request by Forests for Tomorrow  
24 in paragraph 753 to 762.

25 MR. MARTEL: Page?



1 MR. FREIDIN: I'm not sure of the page  
2 number. It's paragraph 753 to 762.

3 MADAM CHAIR: What page are you on in our  
4 argument?

5 MR. FREIDIN: Oh, in my written argument  
6 I wasn't on any particular page, I wasn't going to  
7 refer you to any particular pages.

8 The subject matter of biodiversity  
9 covers -- there's a number of different aspects in it  
10 and I don't believe it's sort of all summarized in one  
11 spot. The initiatives which are ongoing involved ELC,  
12 FEC, a number of other matters, so I don't have a  
13 specific page to refer you to. The page numbers for  
14 FFT's paragraphs I referred to are pages 304 to 312.

15 I am not going to respond to the  
16 specifics of Forests for Tomorrow's argument until I  
17 hear what Ms. Swenarchuk has to say about it, but I  
18 would suggest that the Board review all of the evidence  
19 regarding those proposals in light of the uncertainties  
20 about how to set appropriate objectives for  
21 biodiversity and how to measure or monitor their  
22 achievement.

23 We are going to be talking about specific  
24 terms and conditions in that regard and the  
25 difficulties associated at the present time, at the

1 early stages of entering into landscape management for  
2 the purposes of dealing with biodiversity, and at those  
3 early stages I would ask you to consider the ability  
4 and the advisability -- or the advisability of trying  
5 to set specific direction within specific time frames  
6 when we're dealing with a matter where the professional  
7 witnesses who appeared before you, at least from MNR,  
8 have indicated that they aren't able to provide you  
9 with the kind of detail to do that.

10           You will recall many discussions about  
11 that, Mr. Martel, I think it was in the context of one  
12 of those discussions that you raised this question and  
13 about what was the Board supposed to do with the  
14 biodiversity and I thought in the context of that  
15 discussion you were indicating some concern about  
16 making a mistake about ordering something about  
17 biodiversity because the witnesses weren't able to in  
18 fact define things very clearly.

19           Now, I don't know whether I read you  
20 correctly or not, but if that was a concern or is a  
21 concern of yours; i.e., making a mistake about  
22 something which is perhaps not really -- you don't have  
23 all that clear type of evidence, is the way you avoid  
24 making a mistake by not putting in place a specific  
25 order to in fact produce specific products within

1 specified time schedules.

2           You will recall that in one of our reply  
3 panels Mr. Kennedy described to you the thinking that  
4 went behind organizing MNR's terms and conditions into  
5 different parts, one part being continuing developments  
6 and how the words there were less mandatory, if I can  
7 put it that way, than the ones in relation to things  
8 like planning process and some of the other matters  
9 which were discussed.

10           In my submission, the rationale that Mr.  
11 Kennedy provided is the same answer to any concern that  
12 the Board may have about making that kind of a mistake  
13 and, that is, that in those areas where there is some  
14 certainty that you know what the effect will be, then  
15 you can make a specific order, but if we're dealing  
16 with an area of scientific uncertainty, that that may  
17 be a situation where it would be unwise to be specific.

18           Now, this issue is addressed in one of  
19 the answers to the Board questions, and I'm referring  
20 to Chapter 1.9 commencing on page 199. The issue is  
21 posed - and this is Board issue 2(i) - to what degree  
22 of detail should the Board be addressing detailed  
23 techniques of timber management? How practical is it  
24 for the Board to make decisions on matters being  
25 researched or dealt with outside of the Class EA?



1                   The example that was given there was  
2           enhanced methods for natural regeneration being  
3           considered in the five-year project under sustainable  
4           forestry initiatives.

5                   I don't intend to go through that answer,  
6           Madam Chair. It is an attempt to provide MNR's  
7           response to that question and perhaps maybe briefly to  
8           state that the existence of ongoing research may well  
9           indicate that imposition of rules concerning the use of  
10          a particular technique would be inadvisable.

11                   On the other hand, ongoing research may  
12          indicate that there is a hypothesized risk that is  
13          worthy of research and in those situations - and the  
14          full-tree harvesting issue falls with this category -  
15          in those situations one might ask the questions: How  
16          serious is the hypothesized risk? What is the  
17          expertise of those persons who suggest that there is a  
18          risk? Are there known ways to mitigate against the  
19          risk? How soon would useable results be expected? And  
20          is it reasonable to impose a term or condition given  
21          the level of risk and the time period before better  
22          information would be available? And also having to  
23          consider: What would be the effect of imposing  
24          specific rules now?

25                   Now, that is a list and it's just a list

1 but it is an important list because, in my respectful  
2 submission, those are the sorts of things that the  
3 Board is going to have to do when it retires to write  
4 its decision, and I'm hopeful that that set of criteria  
5 will, in some way, be helpful to the Board in assessing  
6 the evidence that it has heard in relation to many of  
7 these matters, particularly those which are matters  
8 described as continuing development, matters which are  
9 presently the matter of research and ongoing work  
10 within the Ministry of Natural Resources.

11 MADAM CHAIR: Now, Mr. Freidin, I don't  
12 like to interrupt the flow of your argument but on the  
13 issue of landscape management and biodiversity and the  
14 point that you have raised at the beginning of this  
15 discussion of continuing developments, how can we have  
16 any assurance that MNR will do anything about these  
17 things.

18 And I think that issue of: What can the  
19 public expect from MNR in the area of investigating the  
20 possible implementation of a landscape management  
21 approach, in its varied descriptions, and the  
22 protection of -- well, let's just talk about landscape  
23 management, that concept. I think this is the one  
24 issue that I think that question is of particular  
25 interest.

1                   Certainly you don't want to be in the  
2 position, and the Board doesn't want to be in the  
3 position, and none of the parties to this hearing wants  
4 to be in the position at the end of the day to have  
5 seen some sort of a charade go on with respect to what  
6 would happen when this hearing is over.

7                   In other words, the public will expect,  
8 if the Board were to accept your proposal to  
9 investigate the feasibility of landscape management,  
10 the public would expect to see something happen. If  
11 nothing happens because the money isn't there to do it,  
12 there are other things that come up that MNR feels is  
13 more important than investigating landscape management,  
14 for whatever reason, I think that would give the  
15 appearance that this Board had accepted a promise from  
16 MNR with respect to a proposal from another party and  
17 that promise was never fulfilled and the Board didn't  
18 do anything to make sure some explanation or some  
19 action was required as a result of an approval.

20                   Can you speak to that?

21                   MR. FREIDIN: Well, to begin, I  
22 understand the issue and let me say that the Ministry  
23 are involved -- when we say landscape management, there  
24 is a list of items on page 36 and 37 of MNR's reply  
25 panel No. 3 which are all matters which are related to



1 the concern regarding biodiversity.

2 Landscape management is not something  
3 that I think that we can just sort of -- I mean, we can  
4 define it in general terms, but in the specifics that  
5 the public may be saying: Let's see what you've  
6 delivered, it's very difficult to specifically define  
7 exactly what landscape management involves, like write  
8 up a big long list, but what we have on page 36 and 37  
9 of reply panel 3 are a number of initiatives which will  
10 provide important tools and the knowledge and  
11 information base necessary to move towards management  
12 for biodiversity objectives. And there's a list of  
13 them, and it's a fairly extensive list, and it involves  
14 or includes improvements to FEC, and let me tell you  
15 where I'm going before I go through the list.

16 I'm going to go through the list and in  
17 terms of dealing with the "trust issue" like, what's  
18 really going to happen, if I'm correct that these are  
19 matters or initiatives which are all very important to  
20 landscape management, then at the end of the approval  
21 period we'd have to come back and say: We did nothing  
22 in relation to any of these things, we just dropped  
23 them all the minute we got approval from the Board.

24 It sort of goes back to the issue that we  
25 talked about before, and here is an abbreviated version

1 of the list:

2 Improvements to forest ecosystem  
3 classifications, and Dr. Euler spoke about that. And  
4 the development of an ecological land classification  
5 system. We talked about initiatives in FEC, in mapping  
6 of FEC and ELCs.

7 GIS is an important aspect which will  
8 facilitate landscape level analysis and management for  
9 associated ecosystems. The development of information  
10 in relation to forest vegetation successional pathways  
11 under various management regimes which is going to be  
12 coming out of the growth and yield is part of the  
13 knowledge you need to further yourself along in being  
14 able to address biodiversity concerns.

15 The development of landscape ecological  
16 models for use in calculating diversity measures and  
17 predicting changes in diversity under various  
18 management scenarios are being developed as part of the  
19 forest fragmentation and biodiversity project of the  
20 old growth program.

21 The development of landscape patterns  
22 analysis technique to assess forest patch type, size,  
23 shape and interspersation as the basis for a comparative  
24 analysis of landscape features to define habitats as  
25 part of the moose guidelines effectiveness monitoring,

1 is also information which is going to be useful.

2 If everything is dropped and nothing -- I  
3 mean, all that is part of the things that have to be  
4 done to do landscape management. I would submit to be  
5 more precise and say: Well, you've got to do this,  
6 you've got to define ecosystems and they've got to be  
7 this and they've got to have all these characteristics  
8 and they've got to be in this spacial pattern, to give  
9 that kind of definition to biodiversity or to landscape  
10 management, which is a way of doing it, I just don't  
11 think anyone's there yet, and if we're not there yet,  
12 you know, what is it that MNR can promise.

13 MNR can't promise to deliver something  
14 which cannot be described in black and white ways,  
15 which has ways of measuring it. As I say, it's the  
16 point where it's difficult to set specific objectives  
17 as to what will actually be done to try and address  
18 biodiversity, and I'm not being apologetic for that,  
19 the witnesses came forward and said that's just the  
20 state of science at the present time.

21 And I was just going to mention two other  
22 points. We have a term and condition, term and  
23 condition No. 90 where we say that:

24 "We will continue to examine wildlife  
25 habitat supply modeling methodology and



1                   landscape management methodologies as  
2                   potential means of addressing biological  
3                   biodiversity concerns in timber  
4                   management."

5                   And we're not asking for an approval  
6                   that's going to last for the next 50 years, there's  
7                   going to be a term after which the approval will run  
8                   out and we'll have to come back. There are reporting  
9                   requirements within that term, and given what the  
10                  concept of landscape management is at the present time,  
11                  I submit is a reasonable way of approaching that  
12                  problem or the issue that you've raised.

13                  MADAM CHAIR: Are you saying to the  
14                  Board, Mr. Freidin, that in our decision, when we  
15                  tackle how the end of a five- or nine-year approval  
16                  period will be assessed by the Minister of the  
17                  Environment that in fact the Board direct that that  
18                  future assessment to exactly the factors you've  
19                  outlined in the biodiversity issue; that nine years  
20                  from now if Forests for Tomorrow doesn't stay vigilant,  
21                  if Ms. Seaborn and Mr. Sutterfield don't work for the  
22                  Ministry of Environment, if the connection between this  
23                  hearing taking place and what MNR is to do somehow  
24                  isn't there in nine years' time when someone has to  
25                  measure whether you've delivered, whether you've

1 performed, whether you've lived up to any sort of a  
2 Board order, is your suggestion that the Board be very  
3 explicit in saying this is how MNR's commitment was  
4 described to us, that they are examining these specific  
5 matters on page such and such of the record and you  
6 hold them to that?

7 MR. FREIDIN: I would expect that your  
8 Reasons for Decision, assuming that you adopted the  
9 terms and conditions that we have put forward in  
10 relation to the continuing developments, that your  
11 Reasons for Decision would in fact describe what the  
12 evidence is, and I'm going to be talking a bit later  
13 about the importance of your Reasons for Decision, but  
14 I would expect that it would describe what the evidence  
15 on this issue was, I think it should describe what you  
16 understand is the kind of work which is ongoing, and I  
17 can't tell you how to word that, but it may very well  
18 be that - and I'm not asking you to be specific about  
19 what should happen in relation to those matters because  
20 I'm suggesting that it would be counterproductive, No.  
21 1, for you to be specific - in the case of the question  
22 we're dealing with now you can't be specific.

23 So depending on how you word it, people  
24 may say at the end of the approval when MNR comes back  
25 to extend the approval and we get into this issue of:

1       Should we have specific schedules, does MNR have to be  
2       told exactly what to do or they won't do anything, I  
3       would not be surprised if there may be a consideration  
4       of what, in fact, has happened in relation to some of  
5       these things.

6                       And I suppose that's the way the Board  
7       may have some, if I can put it, indirect effect on  
8       these things if they want to sort of give a push, but I  
9       don't think the Minister of Natural Resources needs a  
10      push, that it's in fact demonstrated that it is as  
11      interested, if not more interested, in moving the  
12      yardsticks on these matters as anyone, but they have  
13      said that they really think that they need the  
14      flexibility to develop appropriate approaches to these  
15      issues as opposed to being required to conform to some  
16      arbitrarily imposed deadlines. It really almost boils  
17      down to that.

18                      We're dealing with matters which are very  
19      difficult and complex matters and I'm just wondering  
20      whose interest it would serve, in those circumstances,  
21      to tell a bunch of professionals who say to you that  
22      they aren't able to tell you exactly when and exactly  
23      what products and exactly what form the project or the  
24      product of the project might be. I mean, that's what  
25      they're telling you. I'm not too sure that it really



1 serves anybody's best interest to second guess them.

2 I guess the question would arise whether  
3 there is really evidence upon which to second guess  
4 them, but I would suggest it's really in nobody's  
5 interest to second guess them and say: Well, you may  
6 think that, but here are some specific arbitrary  
7 deadlines.

8 Because what will happen, in my  
9 submission, is that if you impose those kind of  
10 deadlines without the evidentiary basis for them, and  
11 the Ministry of Natural Resources is unable to deliver  
12 on them, that will send the wrong message to the  
13 public. I mean, the public I'm sure, would look at it  
14 and say: Well, there you go, there is the arbitrary  
15 rule, there's the schedule, they didn't meet it, gee  
16 whiz, what a terrible resource management agency,  
17 they're not even living up to the Board's order.

18 Well, if you put them in the position  
19 where they can't do it because you have set an  
20 unrealistic schedule, if you set a schedule and say:  
21 These are the products by a certain time and over the -  
22 I guess really in disregard of the evidence of the  
23 scientists who say they can't do it, there is a concern  
24 from the Ministry's point of view that it would lose  
25 credibility with the public when, in fact, they

1       shouldn't have.

2                   It goes back, it goes right back I guess  
3       to what you talked about earlier when we talked about  
4       giving the process a chance. I mean, these experts  
5       have come before you and I think either you believe  
6       them or maybe you're going to have to choose between  
7       experts about what's doable in terms of schedules, but  
8       the Ministry people have come forward and said, and I  
9       think I would ask you, suggest that it would be  
10      reasonable to come to the conclusion that they are a  
11      bunch of very serious individuals about improving  
12      resource management in the province and that you should  
13      accept their advice on these matters and not impose the  
14      schedules that we're talking about.

15                  Madam Chair, maybe the comments that I  
16      make at the conclusion of my oral submission regarding  
17      the importance of your Reasons for Decision will  
18      perhaps expand on this a little bit further. And if I  
19      could just have one moment, please.

20                  Madam Chair, I think if we could probably  
21      move on then to the next topic that I had on my  
22      outline. Sorry. Oh, there is one matter, there is a  
23      matter that I wanted to address before I do that, it  
24      goes back...

25                  Madam Chair, before I go into my last

1       topic, which is the importance of your decision and the  
2       Reasons for Decision - I didn't know it would be so  
3       well timed having regard to the discussion - I want to  
4       deal with the issue which arose with the  
5       effects/effectiveness monitoring just before the break.  
6       And, if I might, I would just like to indicate where in  
7       MOE's terms and conditions they have inserted the words  
8       effects/effectiveness. You'll find that in term and  
9       condition 64(a) which deals with the topic of area  
10      inspections and you'll find that at page 143 of their  
11      argument. You will find it has been inserted in  
12      Appendix 18, section 1(h) dealing with annual reports  
13      at the forest management unit level, that's also at  
14      page 143. You will find it in Appendix 8, section 1(c)  
15      which deals with the report of past forest operations  
16      and that's also at page 143. And you will find it in  
17      Appendix 20, section 1(e) which deals with the  
18      provincial annual report, and that's at page 144.

19                   And, Madam Chair, I would like to just  
20      read to you two portions from the Ministry of Natural  
21      Resources' argument -- pardon me, MOE's written  
22      argument which give rise to some confusion and concern  
23      by MNR on this issue about what the intent of adding  
24      the words effect/effectiveness is.

25                   If I can first ask you to turn to page



1 140 of the Ministry of the Environment's written  
2 argument.

3 MS. SEABORN: Excuse me, Madam Chair.  
4 Just while you're turning to that page, I just want to  
5 make it clear for the record, Madam Chair, that my  
6 objection was to the characterization of the word local  
7 in our terms and conditions.

8 I'm fully aware and I would always  
9 concede that we use the words effects and effectiveness  
10 monitoring in the terms and conditions and that was not  
11 the basis of the objection.

12 MR. FREIDIN: Thank you. I appreciate  
13 that, but I think it would be instructive for the Board  
14 to -- we still have a concern, I think it would be  
15 instructive to raise it at this time.

16 At page 140 of the Ministry of the  
17 Environment argument, it states at the beginning:

18 "It is MOE's position that the area  
19 inspection program, including  
20 observations of non-desirable conditions,  
21 is a satisfactory mechanism to monitor  
22 for compliance effects and effectiveness  
23 in respect of the activities of timber  
24 management."

25 Now, that is not problematic, we

1 understand that they're saying basically the system  
2 that we have put forward to make observations of  
3 non-desirable conditions is acceptable. But if you  
4 turn to page 151, it states in the first full  
5 paragraph:

6 "MNR currently uses the area  
7 inspection program and, where  
8 appropriate, contract administration and  
9 project supervision to monitor compliance  
10 with approved timber management plans."

11 And now the part I want to highlight:

12 "In addition, MNR is proposing to  
13 record any undesirable conditions which  
14 are observed in the areas of operations.  
15 While MOE supports this initiative, a  
16 record of undesirable conditions is not a  
17 replacement for appropriate  
18 effects/effectiveness monitoring at the  
19 management unit level."

20 That seems to introduce something more  
21 and is suggesting that effects/effectiveness monitoring  
22 is something more than the area inspection program  
23 which would identify undesirable conditions as referred  
24 to at page 140 of their argument. And it is for that  
25 reason that we are concerned that they are suggesting

1 something different and perhaps the use of what I have  
2 referred to earlier as the formal or technical type of  
3 effects monitoring at the local, and by local I mean  
4 the forest management unit level.

5 If I could just have one moment, Madam  
6 Chair. Before I begin my last submission, it may be a  
7 good time for a break.

8 MADAM CHAIR: How long will you be to  
9 conclude, Mr. Freidin?

10 MR. FREIDIN: 10 or 15 minutes.

11 MS. SWENARCHUK: Madam Chair, at some  
12 point today, and this is as good a point as any, I want  
13 to register my formal objection to Mr. Freidin's  
14 apparently leaving argument with regard to  
15 environmental effects to his final reply after our  
16 argument.

17 This proceeding has, in many ways, been  
18 different than many legal proceedings. Normally we  
19 would have, for example, received the proponent's  
20 argument before we had to write ours. Certainly I  
21 expected to receive their full argument, including oral  
22 argument, before presenting mine, however, I now learn  
23 that at a point at which I will not have a right of  
24 reply I will hear the complete elucidation of their  
25 position on environmental effects.



1 I guess there's nothing I can do about  
2 it, but I really want to formally object.

3 MR. FREIDIN: Madam Chair, what Ms.  
4 Swenarchuk is indicating, as I understand it, is that  
5 she would like to have had me say more about  
6 environmental effects.

7 Given the time constraints it looks like  
8 I'm going to take almost the entire two days that I had  
9 allotted to deal with some of the subject matters, I  
10 couldn't deal with all of them, and I don't think I'm  
11 in any way prejudicing Ms. Swenarchuk and certainly  
12 don't feel -- well, I'm not sure if she's asking for  
13 any specific relief and, if she's not, I don't have any  
14 other comments.

15 MADAM CHAIR: It doesn't seem to the  
16 Board, Ms. Swenarchuk, that MNR's position as touched  
17 on in argument is any different than what we have  
18 received in evidence or what is in their written  
19 argument.

20 Are you referring specifically to the way  
21 they're characterizing the Ministry of the  
22 Environment's position on effects monitoring?

23 MS. SWENARCHUK: I hope that there isn't  
24 a position that's going to be developed that's any  
25 different than what we've heard in evidence or seen in

1 the written argument, but certainly there have been  
2 submissions raised today that I think all of us were  
3 particularly anticipating before, and I merely have to  
4 underline for your consideration that if that happens  
5 with regard to any of those issues that are the centre  
6 of our case, I'm not going to have an opportunity to  
7 reply.

8 MADAM CHAIR: Thank you, Ms. Swenarchuk.  
9 The Board will watch for any such development.

10 Mr. Freidin, are you asking the Board to  
11 take our afternoon break and then return to hear the  
12 remainder of your argument?

13 MR. FREIDIN: If I can have five  
14 minutes...

15 MADAM CHAIR: We will take a 15-minute  
16 break.

17 MR. FREIDIN: It may be appropriate.

18 MADAM CHAIR: Okay, thank you.

19 ---Recess at 2:50 p.m.

20 ---On resuming at 3:10 p.m.

21 MADAM CHAIR: Please go ahead, Mr.  
22 Freidin.

23 MR. FREIDIN: Madam Chair, the last item  
24 I would like to speak to is item 11, Importance of  
25 Decision and Reasons for Decision.

1                   The first submission is made -- or I can  
2                   make the first submission by just referring you to the  
3                   outline, and that document states that:

4                   "The Board's decision should be  
5                   founded on properly admitted, properly  
6                   tested, reliable evidence. Great weight  
7                   should be given to sound scientific  
8                   evidence."

9                   In relation to the last point that was  
10                  made in that comment, I would only refer you to Dr.  
11                  Welsh's comment which is reproduced at page 352 of the  
12                  Ministry's argument where he states as follows:

13                  "With wide-spread popular concern  
14                  about forest landscapes, we must guard  
15                  particularly against well-intentioned  
16                  mistakes resulting from inadequate  
17                  understanding of boreal ecosystems."

18                  The page number again was page 352 of the  
19                  MNR argument.

20                  The second topic that the Board Reasons  
21                  for Decision will play an important role in  
22                  communicating the Board's intentions in imposing  
23                  specific terms and conditions, is one that I have  
24                  spoken to a number of times, I think I characterized it  
25                  a little differently in earlier comments. I think



1 earlier I would have characterized it as saying that  
2 Board's reasons for its decision are almost as  
3 important as the terms and conditions or the decision  
4 itself.

5 And there are really three reasons that I  
6 have attempted to convey that message from time to time  
7 and they really are -- or that in three situations that  
8 I can think of the Reasons for Decision will be  
9 important. And when I refer to Reasons for Decision,  
10 in any judicial or quasi-judicial hearing it has been  
11 my experience that Reasons for Decision explain to  
12 somebody who wants to find out what really happened and  
13 why the actual decision was the way it was, they can go  
14 to the Reasons for Decision and they can see a  
15 description in one document which explains not only  
16 that the following term and condition is imposed, but  
17 also describes what the evidence was in relation to  
18 that particular subject matter, what the various  
19 parties' position was on that particular subject  
20 matter, why the Board came to the specific conclusion  
21 that it did on that specific subject matter.

22 And in doing that, if the Board, for  
23 example, accepted completely the position of one  
24 particular party, the Reasons for Decision, in my  
25 experience, should indicate why that particular

1 position was acceptable but, as importantly, should  
2 indicate why the positions put forward by the other  
3 parties was not acceptable.

4 The Board might very well, and I am sure  
5 it will, come up with terms and conditions that none of  
6 us have proposed and it will be important in your  
7 Reasons for Decision to explain why you've done that  
8 and the thinking behind it. And, in my respectful  
9 submission, it's important because your decision can  
10 end up being looked at in a number of different places  
11 and situations but three come particularly to mind.

12 The Environmental Assessment Act states  
13 that your decision can be reviewed by Cabinet. I'm not  
14 saying that it will be, but it can be, and when it's  
15 reviewed by Cabinet it's usually because somebody under  
16 I believe section - let me find the section - 23 of the  
17 Environmental Assessment Act may ask Cabinet to vary  
18 the whole or any part of the decision, substitute for  
19 the decision of the Board such decision as he considers  
20 appropriate, et cetera, et cetera.

21 I think it would be a sad situation if  
22 such an application were made to Cabinet on a  
23 particular point and Cabinet wasn't really aware of the  
24 thinking that went on and that led to a particular  
25 decision, because if they weren't they might very well

1 change your decision in a situation where, had they  
2 known what the actual thinking and the real rational  
3 for your decision was, they may not have changed it at  
4 all.

5           The second situation where your Reasons  
6 for Decision, in my view, will play an important role  
7 is when there are bump-up requests arising out of  
8 timber management plans at the forest management unit  
9 level. When there is such a bump-up request, as you  
10 are aware, it is anticipated that the person requesting  
11 the bump-up will set out what it is that is of concern  
12 to them and, hopefully, there will be some  
13 documentation attempting to justify that their position  
14 is a meritorious one.

15           The Ministry of Natural Resources will  
16 have to respond and, of course, the Minister of the  
17 Environment is going to have to decide whether she will  
18 in fact grant that bump-up request and order an  
19 individual environmental assessment.

20           Just as is the case with Cabinet, I think  
21 it is important that the Reasons for Decision be such  
22 that the Minister of the Environment, when dealing with  
23 those bump-up requests, can go to your Reasons for  
24 Decision to find the answer to the question: Was this  
25 matter dealt with in the class environmental assessment



1 in relation to timber management, and if she finds that  
2 it was but all she finds is a term and condition that  
3 says: Well, it was obviously considered because  
4 there's a term and condition in relation to it but  
5 there is no more, it really will be insufficient from  
6 my perspective.

7 In my respectful submission, she should  
8 be able to go to the Reasons for Decision and not only  
9 find that the subject matter was addressed but to be  
10 able to gain an appreciation of what happened about  
11 that, what the various parties' positions were and why  
12 you came to the decision you did on that.

13 Because if she comes to the conclusion  
14 that the matter indeed was dealt with in this  
15 environmental assessment and all of the reasons being  
16 given by both parties sound identical - just using a  
17 hypothetical - to the ones which were canvassed by the  
18 Board and which you considered and led you -- and you  
19 said: This is how I dealt with it and this is the  
20 decision I came to for these reasons, that will be  
21 information that the Minister of the Environment should  
22 at least consider in deciding whether in fact granting  
23 the bump-up request, whether granting an individual  
24 environmental assessment, to look into that specific  
25 issue again with all the analysis requirements and

1 everything is really a reasonable thing to do.

2 Because if she does that in a situation  
3 where it is, again hypothetically, the exact same issue  
4 that's been dealt with here and all the same sort of  
5 evidence and the same sorts of positions we've dealt  
6 with here and she orders the individual bump-up because  
7 she really didn't have any way of knowing what went on  
8 here, then we're back to Mr. Martel's situation, and  
9 that is, what have we been doing here for the last four  
10 and a half years.

11 And the last point, and the last place  
12 where I think the Board's Reasons for Decision can play  
13 an important role, and that is educating the public.  
14 Mr. Martel, you raised many times, and I think you as  
15 well, Madam Chair, how MNR was going to communicate to  
16 the public what it was doing in relation to timber  
17 management generally, how was it going to explain to  
18 the public the issues and facts surrounding the  
19 practices of clearcutting and the application of  
20 herbicides.

21 Those are issues which are squarely  
22 before the Board and the Board has done absolutely  
23 everything they could to ensure that the public have  
24 been involved in the hearings, and the hearings have  
25 travelled across the province and numerous people have

1       come in and made their positions known.

2                   And, in my submission, one way of  
3       communicating to the public what timber management is  
4       all about and communicating why timber management is  
5       carried out in a certain way are subject matters that  
6       can be properly dealt with in your decision, and when  
7       the public see an explanation of those things from an  
8       independent tribunal, just because of the form in which  
9       that information is contained, it will be looked at as  
10      a reasonable means of obtaining information about  
11      timber management.

12                  And, Madam Chair, I have taken almost the  
13      two days to highlight some of the portions of the  
14      written argument that was filed by the Ministry of  
15      Natural Resources. You appreciate there is much more  
16      in the many pages that we have filed. We have  
17      attempted to put that argument together in a way which  
18      will be helpful to you in addressing the large task  
19      before you of dealing with the issues and to write a  
20      Reasons for Decision of the type that I refer to.

21                  And those are my submissions.

22                  MADAM CHAIR: Thank you very much, Mr.  
23      Freidin, and we will be hearing from you again, if you  
24      feel it necessary to come back and reply, at the end of  
25      the other parties' argument.



1                   Just before we break for the day, there  
2   is one matter the Board wishes to bring to your  
3   attention briefly, and that is, there may be occasions  
4   when we need some kind of clarification with respect  
5   to, it could be a number of things: It could be the  
6   way a term and condition is worded, it could be some  
7   direction being pointed to, a piece of evidence in the  
8   transcript, it could be any number of things.

9                   This hearing will finish in a month and  
10  the Board wants a proposal from the parties with  
11  respect to how we will be contacting parties with  
12  respect to clarification, if we feel we need to have  
13  something clarified, and we will leave that with you  
14  now. It's been the Board's -- we have been attempting  
15  the last two days not to interfere with the arguments  
16  and we would like to conduct ourselves that way with  
17  all the parties, that we can get through your argument  
18  and not interfere with it and not throw it off track by  
19  asking questions that might not be on topic and may be  
20  very minor matters of clarification.

21                   And so we would like to hear from the  
22  parties at some point before argument is completed as  
23  to how they see the Board getting those kind of  
24  clarifications when the hearing is over.

25                   MS. SEABORN: Madam Chair, if I could

1 just address that last issue that you raise. Certainly  
2 from my client's perspective I think we would encourage  
3 you and Mr. Martel to ask questions during our  
4 argument.

5 We do have two days, if there's something  
6 that occurs during the first day or prior to our  
7 argument that you would like us to address in  
8 particular, we would certainly prefer to address it now  
9 rather than later.

10 I understand the Board may wish to seek  
11 further clarification when argument is over, but we are  
12 certainly prepared to answer any questions we can now.

13 MS. SWENARCHUK: And, Madam Chair, we  
14 intended to invite you, at the beginning of our  
15 argument, to ask questions and discuss the issues with  
16 us to whatever extent will be helpful to you in  
17 argument and we would welcome that opportunity.

18 MADAM CHAIR: We'll be back at nine  
19 o'clock tomorrow morning to hear from Mr. Cassidy.

20 MR. CASSIDY: Yes. And I invite you to  
21 ask away, whenever you feel necessary, Madam Chair and  
22 Mr. Martel.

23 ---Whereupon the hearing was adjourned at 3:30 p.m., to  
24 be reconvened on Wednesday, October 21st, 1992,  
commencing at 9:00 a.m.

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